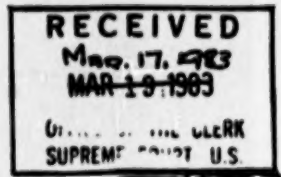


82 6412



No. A-682

---

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

---

WAYNE ROBERT FELDE,

PETITIONER,

v.

LOUISIANA,

RESPONDENT.

---

ON WRIT OF CERTIORARI TO  
THE LOUISIANA SUPREME COURT

---

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

---

NATHANIEL GRAVES THOMAS  
1217 OAKLAND STREET  
SHREVEPORT, LOUISIANA 71101  
318-221-2241  
[MARCH 17, 1983]

TABLE OF CONTENTS FOR APPENDIX

LOUISIANA SUPREME COURT OPINION . . . . .	A
LOUISIANA SUPREME COURT DENIAL OF REHEARING . . . . .	B
DSM-III, SECTION 309.81 . . . . .	C
PORTIONS OF RECORD RELIED UPON . . . . .	D

## STATE of Louisiana

v.

Wayne Robert FELDE.

No. 81-KA-0998.

Supreme Court of Louisiana.

Oct. 18, 1982.

Rehearing Denied Dec. 17, 1982.

Defendant was convicted in the Ninth Judicial District Court, Parish of Rapides, Guy E. Humphries, Jr., J., of first-degree murder, and he appealed. The Supreme Court, Watson, J., held that: (1) evidence sustained finding that defendant was sane at the time of the offense; (2) evidence sustained finding that defendant had the requisite intent; (3) errors in prosecutor's closing argument were harmless; (4) hearsay evidence was properly excluded; (5) defendant was not denied effective assistance of counsel when counsel agreed to defendant's request not to seek any verdict other than not guilty by reason of insanity or guilty with the death penalty; (6) fact that victim was a police officer performing his regular duties was of sufficient aggravating circumstance to warrant imposition of death penalty; and (7) death penalty was properly imposed.

Affirmed.

Dennis, J., filed a concurring opinion.

## 1. Criminal Law §-633(1)

In a death penalty case, procedural rules which diminish the reliability of a jury's determination of guilt or sentence are invalid.

## 2. Criminal Law §-641.12(1)

Evidence did not establish that setting of trial date for another murder case in which defense counsel was involved four weeks prior to defendant's trial and rescheduling of that trial to a date less than a month after defendant's trial began was intended to, or had the effect of, hindering defendant's counsel.

## 3. Criminal Law §-633(1)

There was no inherent prejudice in trial procedure under which trial was held on 11 consecutive days, beginning at 9:00 a.m. on most days and continuing to 7:30 p.m. or even later on most days. LSA-Cr.P. art. 17.

## 4. Criminal Law §-633(1)

Evidence did not establish that guilty verdict or sentence of death was influenced by trial schedule which had court in session on 11 consecutive days, beginning at 9:00 a.m. on most days and continuing past 7:00 p.m. on most days.

## 5. Witnesses §-269(4)

Where defense witness testified on direct examination about her knowledge of homicide, State was entitled to cross-examine her as to the details of the event, including statements made by defendant thereafter.

## 6. Witnesses §-266(1)

Doctor-patient privilege is not applied to a physician who is court appointed. LSA-R.S. 15:476.

## 7. Witnesses §-219(5)

Doctor-patient privilege concerning statements made by defendant to psychiatrist was waived when defendant pleaded guilty.

## 8. Witnesses §-297(4)

When defendant fails to plead not guilty by reason of insanity, information furnished to the sanity commission cannot be used in his cross-examination; involuntary, uncounselled disclosures at a pretrial sanity examination cannot be used at trial without violation of the Fifth Amendment privilege against self-incrimination. U.S. C.A. Const. Amend. 5.

## 9. Criminal Law §-412.1(2)

Where defendant testified that members of the sanity commission amounted to policemen as far as he was concerned and that he did not trust them when he went in to talk to them and was not cooperative, statements made to the sanity commission were free and voluntary.

10. Witnesses — 390

*Miranda* does not preclude cross-examination on basis of voluntary, uncoerced, prior statements which are inconsistent.

11. Criminal Law — 1170½(1)

Where member of sanity commission was not allowed to testify on direct examination about the substance of what defendant told him and where there was never any affirmative evidence that statements which defendant was asked about were actually made by him to the member of the commission, any error in cross-examining defendant about the statements was relatively harmless. LSA-Cr.P. art. 921.

12. Criminal Law — 1171.3

In view of the ample independent evidence that defendant was sane at the time of the offense, prosecutor's improper rebuttal argument concerning statements made by defendant to sanity commission member which were based on matters not of record was harmless.

13. Criminal Law — 627.6(1), 627.7(3)

Statements and addresses of potential witnesses were subject to discovery by the defense only if they were favorable to the defendant and material and relevant to the issue of guilt or punishment. LSA-Cr.P. arts. 718, 723.

14. Criminal Law — 627.6(6)

Absent some showing that the State was suppressing exculpatory material, trial court did not err in refusing to give defendant the prosecution's files on certain witnesses.

15. Criminal Law — 627.6(3)

Where State offered to let the court conduct an inspection of all the photographic negatives in its records, so that defendant could have determined if there were any photographs which were helpful to the defendant, court did not err in denying motion commanding production of photographs favorable to the defendant.

16. Criminal Law — 438(1)

Photographs which would allegedly have shown that the police intended to

shoot the defendant in cold blood after he committed the offense were irrelevant to the issue of the circumstances under which the defendant shot the victim.

17. Criminal Law — 1170½(1)

Leading questions are not the type of prosecutorial error which diminishes the reliability of the jury's verdict and only where there is a clear abuse of discretion which prejudices defendant's rights will a conviction be reversed because of leading questions.

18. Criminal Law — 1170½(5)

Where similar information was brought out by the defense during defendant's direct testimony, cross-examination of defendant's sister as to whether her father was on probation from a federal offense when he died and as to the nature of her father's drinking problem and propensity to violence was not error.

19. Criminal Law — 438(1)

Where employee testified that defendant's sister cashed a \$50 check when defendant bought a gun, the driver's license of defendant's sister and her photograph on it were relevant to the circumstances in which defendant purchased the murder weapon and they were properly admitted into evidence despite argument that the State's only purpose was to utilize the personal unattractiveness of the defendant's sister against the defendant.

20. Criminal Law — 419(12)

Letter in which defendant's brother described defendant's changes in personality after his return from combat in Vietnam was properly excluded as hearsay. LSA-R.S. 15:434.

21. Criminal Law — 419(1)

Homicide — 179

In defendant's trial for homicide in which he asserted a defense of insanity based on posttraumatic stress disorder, results of a questionnaire intended to identify Vietnam veterans who had suffered from exposure to Agent Orange was properly excluded as hearsay and as irrelevant to the question of whether defendant was insane at the time of the crime.



**22. Homicide — 179**

In defendant's trial for murder in which he asserted a defense of insanity based on posttraumatic stress disorder as a result of his combat experiences in Vietnam, trial court properly excluded, as irrelevant, testimony of defendant's sister about the effects of World War II on defendant's father. LSA-R.S. 15:275.

**23. Criminal Law — 478(1)**

Person who had researched complaints from Vietnam veterans did not qualify as an expert on the effect of Agent Orange.

**24. Criminal Law — 354**

Proffered testimony of person, who had researched complaints from Vietnam veterans, about his own ability to cope with Vietnam combat was irrelevant to defense of insanity based on claim of posttraumatic stress disorder as a result of combat experiences in Vietnam.

**25. Homicide — 179**

In defendant's trial for murder in which he asserted defense of insanity based on posttraumatic stress disorder as a result of his combat experiences in Vietnam, proffered testimony of operating room nurse in Vietnam regarding the type of combat wounds received by Vietnam veterans and her personal feelings about the war was irrelevant.

**26. Criminal Law — 1134(3)**

Where ordered medical examination of defendant never took place, trial court's error in ordering a midtrial mental examination was moot where there was no evidence that the threat of the examination affected defendant or his counsel or that the jury had knowledge of the proposed examination.

**27. Criminal Law — 655(5), 656(1)**

Comments made by trial court during the course of the trial, including imploring counsel to get back to the subject of the case, acknowledging that one witness was correct in her testimony that she was "lout," in admonishing one witness not to sit in the chair for an hour and a half over the lunch break, and in commenting that a witness

was creating a problem with his commentary and editorializing on every question did not convey to the jury any impression as to the accused's guilt or innocence. LSA-Cr.P. art. 772.

**28. Criminal Law — 713**

In defendant's trial for murder in which he asserted defense of insanity based on posttraumatic stress disorder as a result of his combat experience in Vietnam, prosecutor's closing arguments that photographs of the scene of the offense looked like a Louisiana highway on which the defendant was being escorted to jail rather than looking like a foxhole or a cave or anything in Vietnam was proper.

**29. Criminal Law — 1171.1(3)**

Because of evidence that defendant was an escapee at the time of the offense and intended to avoid further jail time, where was a factual basis for prosecutor's closing argument that the defendant, if found not guilty by reasons of insanity, would easily escape and, although that prediction of the consequences of the jury's verdict was improper, the error was not likely to have contributed to the verdict. LSA-Cr.P. art. 774.

**30. Criminal Law — 1171.1(5)**

Prosecutor's brief reference in closing argument to the fact that the automobile seat in which police officer was sitting at the time that he was shot had not been brought into evidence but was in the courthouse and had been available if the defense wanted to present it was harmless.

**31. Criminal Law — 719(1)**

Prosecutor erred in quoting from report of psychiatrist in his final argument to the jury where the report was not in evidence. LSA-Cr.P. art. 774.

**32. Criminal Law — 1171.1(3)**

Prosecutor's error in quoting in closing argument from report of psychiatrist which had not been admitted into evidence was not so prejudicial as to require a new trial where the jury was charged that the prosecutor's arguments did not constitute evidence.

**33. Criminal Law — 849(1)**

Trial court did not err in ordering recess between defense closing argument and prosecutor's rebuttal, even though court had failed to declare a recess following the closing argument of the prosecution and before the closing argument of the defendant.

**34. Criminal Law — 728**

Where defense counsel alluded to material in psychiatrist's report in closing argument, rebuttal which referred to information in psychiatrist's report did not exceed the scope of defendant's closing argument.

**35. Criminal Law — 728**

Where defendant had referred to the manslaughter statute in his closing argument, rebuttal argument on the law of manslaughter was proper, even though defendant was only seeking a verdict of not guilty by reason of insanity or guilty with the death penalty.

**36. Criminal Law — 645**

State has the right to make the last argument to the jury. LSA-Cr.P. art. 765.

**37. Criminal Law — 331**

Defendant's burden of proof on the affirmative defense of insanity is constitutional.

**38. Criminal Law — 868**

Evidence did not show that jury was not properly insulated from outside influences because the jury room was the most convenient and, at times, the only place where hot coffee could be found.

**39. Jury — 90**

Disclosure during trial that a juror is acquainted with a witness does not necessarily prevent a fair trial.

**40. Jury — 90**

Defendant was not deprived of a fair trial by fact that one juror apparently knew one of the State's witnesses who testified in rebuttal as a member of the sanity commission.

**41. Criminal Law — 578(1)**

Testimony by members of the sanity commission was sufficient to sustain jury's finding that defendant was sane at the time of the offense despite persuasive testimony about the effect of Vietnam combat on defendant and testimony about posttraumatic stress syndrome.

**42. Homicide — 230**

Evidence that defendant deliberately killed police officer in order to escape and that he was not totally intoxicated as he was able to get out of the police car, cross the median, and travel some additional distance and reload his gun while handcuffed was sufficient to show a specific intent to kill or inflict great bodily harm on the officer.

**43. Criminal Law — 641.13(4)**

To establish ineffective representation, it must be shown that counsel did not meet the level of competency normally demanded in criminal cases; adequate defense must be based on informed professional deliberation.

**44. Criminal Law — 641.13(2)**

Defendant was not deprived of effective assistance of counsel merely because counsel agreed to follow defendant's instruction to not attempt to obtain any verdict other than not guilty by reason of insanity or guilty of first-degree murder with capital punishment. LSA-Const. Art. 1, § 13; U.S.C.A. Const. Amend. 5.

**45. Criminal Law — 641.13(1)**

Fact that a particular strategy is unsuccessful does not establish ineffective assistance of counsel.

**46. Attorney and Client — 88**

Defendant, who was mentally competent to stand trial and enrolled as cocounsel, had a constitutional right to impose condition of employment on his counsel.

**47. Attorney and Client — 88**

Defendant can limit his defense consistent with his wishes at the penalty phase of trial.

**48. Criminal Law — 999(1)**

Defendant can waive postconviction remedy.

**49. Criminal Law — 1026**

Defendant cannot waive his right to appeal a death sentence.

**50. Criminal Law — 641.13(2)**

Defense counsel's agreement, in accordance with defendant's wishes, not to ask the jury for life imprisonment even after jury rejected plea of not guilty by reason of insanity did not invalidate defendant's conviction or sentence.

**51. Criminal Law — 641.13(2)**

Record demonstrated that defendant was not denied effective assistance of counsel despite claim that counsel failed to voice timely contemporaneous objections, to request appropriate jury admonitions, and to move for mistrials.

**52. Criminal Law — 938(1)**

Where expert and lay testimony on posttraumatic stress disorder was comprehensive, testimony from additional witnesses who were not located until after trial would merely have been cumulative and the location of those witnesses did not constitute newly discovered evidence warranting a new trial. LSA-Cr.P. art. 864.

**53. Witnesses — 13**

Where subpoena was served on prosecutor at a late date and the prosecutor was unable to appear, trial court was within its discretion in quashing the subpoena directing the prosecutor to appear for the hearing on motion for new trial on the ground that the subpoena was oppressive.

**54. Criminal Law — 913(1)**

Fact that, after conclusion of defendant's trial in which plea of not guilty by reason of insanity based on posttraumatic stress disorder was asserted as a defense, Louisiana hospitals adopted manual of the American Psychiatric Association recognizing the disorder did not require grant of a new trial.

**55. Criminal Law — 1134(3)**

Contention that trial court erred in failing to grant defense motion for payment of trial expenses was irrelevant to defendant's appeal.

**56. Criminal Law — 906(3)**

Errors in uniform capital sentencing report which indicated that defendant had only completed 11th grade, rather than graduating from high school, and had received a 15-year sentence for second-degree murder in prior case in which he had actually pled guilty to manslaughter and received a sentence of 12 years were inadvertent and did not show that trial court had a negative attitude towards defendant which affected sentencing.

**57. Criminal Law — 906.5**

Fact that defendant did not receive a copy of capital sentencing report was a technical omission which did not harm him. LSA-Cr.P. art. 906.9.1, § 2.

**58. Homicide — 354**

Sentence of death imposed upon defendant who sought death penalty after plea of not guilty by reason of insanity was rejected and who had been convicted of killing a police officer in the line of duty was not imposed under the influence of passion, prejudice, or any other arbitrary factor. LSA-Cr.P. art. 906.9.1.

**59. Homicide — 354**

Fact that the victim was a peace officer performing his regular duties was an adequate aggravating circumstance to warrant imposition of death penalty. LSA-Cr.P. art. 906.4(b).

**60. Homicide — 354**

Where only one other death penalty had been imposed in the parish since January 1, 1976 and there had been no other verdicts of first-degree murder, as all other homicides involving a charge of first-degree murder had been plea bargained to a charge of second-degree murder or lesser offense, and where none of the other murders involved the situation where a police officer was killed in the line of duty, imposition of death penalty on defendant who was con-

victed of first-degree murder of a police officer in the line of duty could not be held disproportionate to the sentences in other cases. LSA-Cr.P. art. 905.9.1.

William J. Guste, Jr., Atty. Gen., Barbara Rutledge, Asst. Atty. Gen., Paul J. Carmouche, Dist. Atty., R. Cody Mayo, Edward E. Roberts, Jr., Dale G. Cox, Asst. Dist. Attys., for plaintiff-appellee.

Nathaniel Graves Thomas, Shreveport, for defendant-appellant.

WATSON, Justice.

Defendant, Wayne Robert Felde was convicted of first degree murder. LSA-R.S. 14:30.<sup>1</sup> The jury unanimously recommended a death sentence on the ground of one aggravating circumstance: the victim was a peace officer engaged in his lawful duties. LSA-Cr.P. art. 905.4(b).<sup>2</sup> Defendant has appealed and assigns fifty errors by the trial court.

#### FACTS

Felde, convicted of manslaughter and assault in Maryland, was serving a twelve year sentence when he escaped from a minimum security job and hitchhiked to his mother's home in Grand Cane, Louisiana. Felde then visited other states but returned to Louisiana because of his mother's terminal cancer. He was accompanied by two Colorado friends, Larry Hall and Cheryl McKenzie. At his mother's dying request, Felde abandoned an alias, Harold "Harry" Hershey, and worked under his real name in Shreveport, Louisiana. His mother died on October 13, 1978.

On October 20, 1978, Felde's sister, Florence McDonald, told him the police were looking for him. She drove Felde, Hall and

McKenzie to Loran's Sporting Goods in Shreveport where Felde purchased a .357 Magnum gun and a box of shells. With the loaded gun in his waistband, Felde was dropped off at the Pizza Inn on Highway 171. Larry Hall and Cheryl McKenzie were supposed to get his things and pick him up at the parking lot behind the pizza place. Felde stayed awhile at the Pizza Inn and then went next door to the Dragon Lounge. He waited in vain about six hours and drank enough beer to get "pretty loaded". (Tr. 2118) He finally asked that a taxi be called. Because a customer reported there was someone at the Lounge with a gun, two officers arrived in separate vehicles. While they were frisking another customer, Felde was following the taxi driver outside. After being told Felde was the man with the gun, officers Norwood and Thompkins searched him but did not discover the pistol.

The taxi driver refused to carry Felde because of his intoxication, and officer Thompkins arrested him as a simple drunk. Felde's hands were handcuffed behind his back and he was placed in the rear seat of Thompkins' police car. While Felde was being driven in the police car, William David Sweet, in another car, observed Felde up close behind the front seat. Felde was leaning forward on the right hand side of the driver. The officer put on his brakes and simultaneously made a motion to push Felde back in the seat. Felde said he was trying to shoot himself when he was pulled forward and pushed back. A shot was fired. There was testimony that the car filled with smoke. Felde did not remember anything after the first explosion. There were three other shots, leaving Felde with at least one bullet in his gun. The vehicle swerved against a guard rail and stopped. Thompkins staggered out of the car across the road before collapsing dead in a ditch.

tence in accordance with the recommendation of the jury."

1. LSA-R.S. 14:30 provided at the time of the crime, October 20, 1978:

"First degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. "Whoever commits the crime of first degree murder shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sen-

2. LSA-Cr.P. art. 905.4(b) provides:

"The following shall be considered aggravating circumstances:

"(b) The victim was a fireman or peace officer engaged in his lawful duties; ..."

Felde ran slowly away, pausing before he crossed the street, and disappeared in an automobile lot. Shortly afterward, the police discovered Felde in a nearby residential area up against a fence. Officer Humphrey told Felde to freeze. Felde crouched on the ground, brought his hands up and held a gun in a shooting position. Officer McGraw told him to drop it and then fired a shotgun at Felde twice: twelve buckshot pellets were fired in each blast.<sup>3</sup> Felde, still handcuffed but with his hands in front of him, curled up on the ground in a fetal position.<sup>4</sup> His .357 Magnum gun was in a cocked position and fully loaded.

Dr. Robert E. Braswell, the Caddo Parish coroner, conducted the autopsy on Officer Thompson, who died of a gunshot wound in the right lower back which entered at a downward angle of forty-five degrees. The bullet fragment hit the twelfth rib, grazed the right kidney, and then hit the vena cava and the aorta, before lodging in the abdominal wall. Another bullet which entered on the right side at approximately the same angle would not necessarily have been fatal. At least one bullet went through the roof of the car.

Felde was treated for gunshot wounds to the chest, abdomen, and lower extremities; abdominal abscess; fracture of the left tibia; fracture and gunshot wound in the right ankle; perforations of the stomach, small bowel, right colon, Sigmoid colon, right kidney, right lobe of the liver, spleen, and pancreas; and acute renal failure. Surgery was performed, including: an exploratory laparotomy; a splenectomy; removal of part of the liver; a right colectomy; right nephrectomy; suture of perfora-

tions of the stomach and small bowel; drainage of the pancreas; a left Sigmoid colectomy; and a shunt in the left ankle.

Because Felde pleaded not guilty and not guilty by reason of insanity, the court, on motion of the state, appointed Dr. Braswell and two psychiatrists, Dr. R. Fred Marceau and Dr. Norman Mauroner, to a sanity commission. LSA-Cr.P. art. 650.<sup>5</sup> All agreed that Felde was competent to stand trial and sane at the time of the offense, able to tell right from wrong. At trial, Felde was enrolled as co-counsel. The defense was insanity at the time of the crime; defendant allegedly suffered a post-traumatic stress syndrome as the result of combat in Vietnam.

Dr. Fred Marceau, a former member of the faculty at the L.S.U. Medical School in the field of psychiatry, saw Felde on January 31, 1979. Felde cooperated with Marceau during the hour and fifteen minute sanity commission interview. Dr. Marceau estimated that Felde was in the moderate range of intoxication at the time of the shooting. Dr. Marceau testified that there is a condition known as chronic or delayed post-traumatic stress disorder which can start six months from the traumatic event. Military combat can cause this condition and, in some instances, it results in dissociative states during which the individual behaves as though reexperiencing the traumatic event. Nothing in Dr. Marceau's examination of Felde would support a claim of post-traumatic stress disorder.

There was lay testimony that there was a noticeable difference in Felde's behavior before and after his military duty in Vietnam. Before his service, he was a jovial, happy-

3. This account was contradicted by a witness, Krenan Gingles, who indicated that at least one other officer also fired a shotgun.

4. The defense argues, that Felde's hands remained handcuffed behind him throughout the encounter and this is proven by the pattern of his injuries sketched at Confederate Memorial Medical Center. The diagrams are not conclusive. If Felde's hand and arms were held in front of his head, also uninjured, they would not have been hit.

5. LSA-Cr.P. art. 650 provides:

"When a defendant enters a combined plea of 'not guilty and not guilty by reason of insanity,' the court may appoint a sanity commission as provided in Article 644 to make an examination as to the defendant's mental condition at the time of the offense. The court may also order the commission to make an examination as to the defendant's present mental capacity to proceed. Mental examinations and reports under this article shall be conducted and filed in conformity with Articles 644 and 646."



go-lucky kid. Afterward, he was moody, depressed, and irritable, with erratic sleeping habits and a low tolerance for alcohol. One of Wayne Felde's sisters, Maria Kristine Krebbs, testified that she had sent one brother to Vietnam and a different one, a stranger, had returned. This sister, a nurse, and her mother, also a nurse, attempted to get psychiatric help for Felde but were unable to do so.

The transcript of testimony of Dr. Guillermo Olivos was read into the record. A board certified psychiatrist, Dr. Olivos saw Wayne Felde on December 8, 1973, after the Maryland homicide. Concerning the killing of his friend, Felde had a poor memory and questioned whether he did it, how he did it, and whether he did it in self-defense. He was ambivalent and depressed about the situation.

Dr. John P. Wilson testified for the defense as an expert psychologist and professor of psychology who has made special studies of the post-traumatic stress disorder in Vietnam veterans. Dr. Wilson examined Felde on August 30, 1979, at the Caddo Parish Jail for four and a half hours. Dr. Wilson concluded unequivocally that Wayne Felde had a chronic form of post-traumatic stress disorder. This is a recognized behavioral disorder or mental defect which is recognized by the American Psychiatric Association. The symptoms are also shared by survivors of atomic attacks, holocausts or natural disasters. Post-traumatic stress response symptoms include: depression; flashbacks to the trauma; inability to control one's impulses; violent, explosive behavior; frequent suicidal thoughts and recurring nightmares. There is often memory impairment and inability to feel close to people, an emotional numbing. There is a great deal of survivor guilt with this disorder. Because of the type of combat required in Vietnam, veterans of that conflict also have moral guilt. The disorder is not new but was only recently recognized by the American Psychiatric Association as a bonafide mental disorder. Sixty percent of Vietnam combat veterans experience post-traumatic stress, a very high percentage. This is because units did not stay together,

there was no real war objective, the soldiers were quite young, and drugs were freely available at a low price. Vietnam soldiers averaged 19.2 years, whereas those in World War II and Korea averaged 26½. The units in World War II stayed intact and came home together whereas in Vietnam each veteran came home alone. Vietnam veterans with P.T.S.D., or post-traumatic stress disorder, tend to move from one job to another. Felde's military record showed three AWOLs and a drunk charge, the first AWOL occurring one month after he returned from Vietnam. On one of these occasions, Felde wrecked a brand new car; his behavior was erratic and irrational. These episodes were consistent with his post-traumatic stress syndrome as were his marital difficulties. Part of the syndrome is a hyper alertness, where the person becomes easily irritated and agitated and startles easily. Sleep disturbances are part of the disorder. Twenty-five percent of all men in prison are Vietnam era veterans. The suicide rate of Vietnam veterans is thirty-three to forty percent higher than that of others the same age. The alcoholism rate among Vietnam veterans is sixty percent higher than it was for veterans of World War II or Korea. The Veterans' Administration now recognizes post-traumatic stress disorder as a service connected disability for which treatment can be received. Stress in a person's emotional life, such as the death of a mother, can trigger disassociative reactions. Dr. Wilson said that Felde's Maryland killing sounded like a classic disassociative reaction in which a person uses survival contact tactics because he is not fully aware of what is happening. Many Vietnam veterans suffering from post-traumatic stress disorder are being misdiagnosed as being alcoholics or having other disorders. Felde's prison record in Maryland was exemplary, which is characteristic of Vietnam veterans. The confined, controlled environment helps the post-traumatic stress disorder. Although they suffer tremendously, such inmates tend to behave well while incarcerated. Dr. Wilson testified that, since his father died when Wayne



Felde was twelve, he was particularly close to his mother, the most significant support person in his life. After losing his mother and then learning that the police were coming for him, he felt helpless, trapped and scared. He bought the gun as a form of security against an impending threat. Many Vietnam veterans even sleep with their weapons. In the doctor's opinion, Felde bought the gun as part of a decision to kill himself. When Felde pulled the gun in the car, it was Dr. Wilson's opinion that he wanted to kill himself rather than Officer Thompkins. Dr. Wilson recounted Felde's account of the situation beginning at the Dragon Lounge, "they asked me where, where I had the, where the gun was, then they handcuffed me and put me in the police car. I was in the back of the car and I thought I'd blow my brains out. I tried to turn the barrel around towards my face. I remember the jerk going forward then I saw flashes, flashes like incoming round hits, like firecrackers, hearing machine guns, I heard machine guns, I heard rifle fire, I heard more explosions and I couldn't move. I was happy because I knew I was going to die." (Tr. 1804-1805) According to Dr. Wilson, this fragmented memory is totally consistent with a disassociated state and flashback typical of post-traumatic stress disorder. In Dr. Wilson's opinion, "At that time, in that disassociated state, he couldn't discriminate right from wrong and he couldn't conform his conduct to the law. I think he was totally disoriented." (Tr. 1806) Dr. Wilson said that Felde needed long term group psychotherapy with other veterans and, if he were put on the street, he would either kill himself or kill someone else. Dr. Wilson also said that the M.M.P.I. tests (Minnesota Multiphasic Personality Inventory) on Felde were entirely consistent with P.T.S.D. His M.M.P.I. shows a depressed, scared, introverted, passive person. Dr. Wilson admitted that Felde's reloading of the gun was inconsistent with his desire to kill himself. He also admitted it was possible Felde shot Thompkins simply because he didn't want a return to prison.

Dr. Charles Figley, a tenured professor in psychology, author of articles and books,

and a nationally recognized expert on the adjustment problems of Vietnam veterans, testified as an expert psychologist that Felde is definitely suffering from a mental defect, a post-traumatic stress disorder. Felde was in the upper twenty percent of veterans in his exposure to combat stress. In this doctor's opinion, Felde bought the gun to kill himself and was trying to commit suicide in the police car.

Dr. Joe Ben Hayes, an expert in psychiatry, testified that, in his opinion, Felde is suicidal and has a post-traumatic stress disorder. In this doctor's opinion Felde bought the gun to kill himself if he were cornered.

Dr. Norman Mauroner, a member of the Sanity Commission, and a specialist in psychiatry testified in rebuttal. In Mauroner's opinion, on October 20, 1978, at approximately 9:30 P.M., Felde was able to distinguish right from wrong. Dr. Joe Ben Hayes then testified again in rebuttal that Felde did not give him any real information about his disorder until his fourth evaluation.

#### ASSIGNMENT OF ERROR NUMBER ONE

"The prosecution engaged in improper pretrial maneuvering and overreaching for the purpose of interfering with trial preparation of defense counsel and thereby caused the defendant to be deprived of his rights to compulsory process and effective assistance of counsel."

It is contended that the state fixed trial in *State v. Mills*, a second degree murder case with the same defense counsel, less than four weeks prior to Felde's trial to prevent Felde's counsel from proper preparation. Further, it is argued that the *Mills* trial was continued until September 8, 1980, less than a month after Felde's trial began, to hamper defense counsel's concentration. Despite these alleged maneuvers, counsel argues that he could not request a continuance because of Felde's mental deterioration in prison.

[1] Defense counsel did not object to the setting of the *Mills* case for trial and raises the issue for the first time on appeal. LSA-Cr.P. art. 841.<sup>6</sup> Despite the lack of a contemporaneous objection, the assignment has merit if it was a factor in the jury's decision. In a death penalty case, procedural rules that diminish the reliability of a jury's determination of guilt or sentence are invalid. *Beck v. Alabama*, 447 U.S. 625, 100 S.Ct. 2382, 65 L.Ed.2d 392 (1980). See *State v. Sonnier*, 379 So.2d 1336 (La., 1980).

[2] Defense counsel was engaged to represent Felde on July 13, 1979, and trial began on August 11, 1980, giving him a year to prepare the case. It has not been established that the prosecution tried to hinder Felde's counsel. The latter conducted a vigorous defense. The record does not indicate any lack of preparation or establish that the defense was prejudiced. When there is inadequate time, the proper remedy is a continuance, which was not requested. LSA-Cr.P. art. 712.<sup>7</sup>

This assignment of error lacks merit.

#### ASSIGNMENT OF ERROR NUMBER TWO

"The unreasonable and unjustifiable voir dire and trial schedule fixed by the trial court deprived the accused of his right to due process of law, his right to effective assistance of counsel during voir dire and at trial, his right to full voir dire

examination of prospective jurors, his right to trial by a fair and impartial jury, and his right to testify at trial in his own behalf."

It is argued that the trial judge accelerated the trial schedule in order to complete the matter before the Labor Day weekend and thereby subjected defense counsel and defendant, as well as the jury, to undue fatigue. Also, the schedule created defense problems in examination of out of town experts. It is contended that the trial schedule was as follows:

August 11 (Monday)	— 9 a.m. to 10:15 p.m.
August 12 (Tuesday)	— 9 a.m. to 9:30 p.m.
August 13 (Wednesday)	— 9 a.m. to 9 p.m.
August 14 (Thursday)	— 9 a.m. to 5:30 p.m.
August 15 (Friday)	— 9 a.m. to 3:15 p.m.
August 16 (Saturday)	— 9 a.m. to 8 p.m.
August 17 (Sunday)	— 10 a.m. to 7 p.m.
August 18 (Monday)	— 9 a.m. to 7:30 p.m.
August 19 (Tuesday)	— 9:30 a.m. to 6 p.m.
August 20 (Wednesday)	— 9 a.m. to midnight
August 21 (Thursday)	— 12:01 a.m. to 1:15 a.m.

[First Supplemental Brief, P. 43]

It is conceded that these hours included one and one half hour lunch and dinner recesses.

[3] There was no specific objection to the trial schedule. LSA-Cr.P. art. 841. The trial was conducted in an expeditious manner as required by LSA-Cr.P. art. 17,<sup>8</sup> and the sequestered jury undoubtedly preferred that the trial move forward on a seven day basis. There is no inherent prejudice in such a trial procedure. *Oertle v. United States*, 370 F.2d 719 (10 Cir.1966).

#### 6. LSA-Cr.P. art. 841 provides:

"An irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence. A bill of exceptions to rulings or orders is unnecessary. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take, or of his objections to the action of the court, and the grounds therefor.

"The requirement of an objection shall not apply to the court's ruling on any written motion."

Reference to Art. 841 and failure to object will be found in subsequent assignments, not to indicate that the error cannot be considered but merely to note that the error was not a matter of concern at the time.

#### 7. LSA-Cr.P. art. 712 provides:

"A motion for continuance, if timely filed, may be granted, in the discretion of the court, in any case if there is good ground therefor."

#### 8. LSA-Cr.P. art. 17 provides:

"A court possesses inherently all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue such writs and orders as may be necessary or proper in aid of its jurisdiction. It has the duty to require that criminal proceedings shall be conducted with dignity and in an orderly and expeditious manner and to so control the proceedings that justice is done. A court has the power to punish for contempt."

[4] Defense counsel, despite the strain on his time and energy, conducted an excellent defense. The extensive evidence, lay and expert, about Felde's post-traumatic stress disorder following combat in Vietnam is very persuasive. The jury was moved to state their support for veterans in general although they rejected Felde's plea of insanity at the time of his offense.<sup>3</sup> There is no indication that either the guilty verdict or the sentence was influenced by the trial schedule.

This assignment lacks merit.

**ASSIGNMENTS OF ERROR NUMBER THREE, SIXTEEN, SEVENTEEN, EIGHTEEN, NINETEEN, TWENTY, TWENTY-ONE, TWENTY-TWO, TWENTY-THREE, TWENTY-FOUR, TWENTY-FIVE, TWENTY-SIX, AND TWENTY-SEVEN**

"The misinformation and misrepresentations set forth in the prosecution Response to Defendant's Motion for Discovery and in the prosecution Supplementary Response to Defendant's Motion for Discovery." (No. 3)

"The prosecution failure to furnish the defense with any notice of intent to utilize extraneous offense evidence at trial." (No. 16)

"The improper and prejudicial prosecution utilization of extraneous offense evidence at trial." (No. 17)

"The prosecution failure to furnish the defense with any notice of intent to utilize at trial alleged inculpatory statements purportedly made by the accused." (No. 18)

"The improper and prejudicial prosecution utilization at trial of alleged inculpa-

tory statements purportedly made by the accused which were not legally admissible as evidence." (No. 19)

"The prosecutor, in asserting facts by way of questions propounded to witnesses in the presence of the jury, made himself a witness without being subject to cross-examination, in violation of the fundamental principle of the hearsay rule and of the constitutional right to confrontation." (No. 20)

"The prosecutor, through improper displays and by making factual statements in the form of questions propounded to witnesses in the presence of the jury, improperly utilized an inculpatory statement allegedly obtained from the defendant by police in connection with the defendant's 1972 Maryland homicide charge, neither the existence nor the free and voluntary character of which statement was ever established by any evidence whatsoever, either before or after its misuse by the prosecutor, who was well-aware that the defendant's Maryland conviction had been reversed because of the use at trial of that same statement, the character of which the Maryland Court of Criminal Appeals held had not been shown to be free and voluntary." (No. 21)

"The denial by the trial court of the Defense Motion to Expunge Portion of Sanity Commission Report." (No. 22)

"The sanity commission appointed by the Court on motion of the prosecutor, in addition to the authorized disclosure of objective psychiatric findings, improperly disclosed to the prosecutor inculpatory statements allegedly made by the defendant, which information was improperly

"This trial will forever remain indelibly imprinted upon our minds, hearts, and consciences.

"Through long and careful deliberation, through exposure to all evidence, we felt that Mr. Felde was aware of right and wrong when Mr. Thompkins' life was taken. However, we pledge ourselves to contribute whatever we can to best meet the needs of our veterans." (Tr. 2408)

**9. "STATEMENT ON BEHALF OF JURY**

"BY MR. OLIVER: We, the Jury, recognize the contribution of our Viet Nam veterans and those who lost their lives in Viet Nam."

"We feel that the trial of Wayne Felde has brought to the forefront those extreme stress disorders prevalent among thousands of our veterans."

"We have attempted, through great emotional and mental strain, to serve and preserve the judicial branch of our government by serving on this Jury."

utilized at trial through the use of assertive questions propounded to witnesses by the prosecutor in the presence of the jury." (No. 23)

"The prosecutor, in order to subvert the insanity defense, asserted in questions propounded in the presence of the trial jurors, facts which he was prohibited from proving, thereby improperly commenting, by way of question, on inadmissible evidence, to wit, inculpatory excerpts from statements made to the sanity commission in 1979, and to Maryland police in 1972." (No. 24)

"Prosecution display and utilization at trial of inculpatory statements allegedly made by the defendant to the sanity commission appointed by the court on motion of the prosecutor, which statements were neither freely or voluntarily made as they were legally compelled and also because, at the time they were allegedly obtained from the defendant, he was under such extreme conditions of custodial mistreatment and stress that any such statements were the direct result of, and totally attributable to, the exertion of improper influence, fear, intimidation, menace, coercion and duress upon the mind and person of the defendant." (No. 25)

"The prejudicial failure of the trial court to immediately order the trial jury removed from the courtroom when specifically requested to do so by defense counsel." (No. 26)

"A prosecution rebuttal expert witness, who was a member of the sanity commission appointed by the court on motion of the prosecution to examine the accused, intentionally answered a defense question on cross-examination in an unresponsive manner for the sole purpose of prejudicing the defendant through disclosure to the jury of legally inadmissible and erroneous information allegedly obtained from the defendant, by the prosecution

expert witness during his court-ordered psychiatric examination of defendant, which information had been disclosed to, and discussed with, the prosecutor by the witness prior to his being called to testify for the prosecution on rebuttal." (No. 27)

The prosecution represented, in answers to discovery, that it had no statements by the defendant and that it did not intend to introduce in evidence any oral statements made by defendant. It did not do so. However, statements made by Felde to Dr. Marceau and to Maryland authorities were used in cross-examination.

Mrs. Maria Krebsbach, Felde's sister, was asked by the state to read from a document the following: "We were wrestling over my rifle and I told him to leave my home and he got shot. He would not leave so he got shot." (Tr. 1554) An objection to this line of questioning was sustained. Defense counsel did not ask that the jury be admonished to disregard the testimony and no admonishment was given. The state was told to lay a foundation for introduction of the Maryland confession, S-83, before using it for cross-examination. It was never introduced into evidence.<sup>10</sup>

[5] Later, Ms. Krebsbach was asked if Felde said, "You don't have to worry about him, I blew his head off, he's in my bedroom closet" (Tr. 1558). She responded that she did not recall those words. All she remembered was Felde saying, "I killed a man, I think." (Tr. 1558) There was no evidence that the prior statement had been made. Mrs. Krebsbach had testified on direct examination about her knowledge of the homicide, and the state was entitled to cross-examine her on the details of the event.<sup>11</sup>

[6, 7] Defendant contends that the information given to Dr. Marceau during his sanity examination was privileged and

"Yes, very. Very upset. He told mother to wipe his tears and he says, 'I think there's a man in there that was shot in the head. I think I killed him.' And then, they, they took Wayne off." (Tr. 1513)

10. Felde's initial conviction in Maryland was reversed because this confession was not shown to be free and voluntary under a correct standard of proof. *Felde v. Maryland*, 336 A.2d 823, 26 Md.App. 15 (1975).

11. In direct examination, she said:

should not have been used in his cross-examination. However, the doctor-patient privilege does not apply to a physician who is court appointed. LSA-R.S. 15:476. Further, the privilege was waived when defendant pleaded insanity. *State v. Berry*, 324 So.2d 822 (La., 1975); *State v. Aucoin*, 362 So.2d 508 (La., 1978).

[8, 9] Defendant also argues that the Fifth Amendment to the United States Constitution<sup>12</sup> prevented cross-examination on statements purportedly made by Felde to Dr. Marceau. When a defendant fails to plead not guilty by reason of insanity, the information furnished to the sanity commission cannot be used in his cross-examination. *State v. Jones*, 359 So.2d 95 (La., 1978). Involuntary, uncounseled disclosures at a pretrial sanity examination cannot be used at trial, without violation of the Fifth Amendment privilege against compelled self-incrimination. *Estelle v. Smith*, 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981). In *Estelle v. Smith*, *supra*, a psychiatrist who examined defendant under court order to determine his competency to stand trial testified at the penalty phase on the basis of that examination that Smith was a severe sociopath and Smith was sentenced to death. The court in *Estelle* distinguished that situation from one in which there was a sanity examination occasioned by a defendant's plea of not guilty by reason of insanity at the time of his offense. "A criminal defendant, who neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence, may not be compelled to respond to a psychiatrist if his statements can be used against him at a capital sentencing proceeding." *Estelle v. Smith*, *supra*, 451 U.S. at 468, 101 S.Ct. at 1876, 68 L.Ed.2d at 372. However, Felde placed his sanity at issue. Compare *United*

*States v. Madrid*, 673 F.2d 1114 (1982). Felde's counsel had no objection to the sanity commission's appointment. [Caddo Proceedings, Tr. 8] Thus, his attorney participated in the "significant decision" to submit to the examination. *Estelle v. Smith*, *supra*, 451 U.S. at 471, 101 S.Ct. at 1877, 68 L.Ed.2d at 374. Wayne Felde said that, to him, the members of the sanity commission amounted to policemen; he did not trust them when he went in to talk to them. He was guarded and polite, but said he was not cooperative. Therefore, any statements made to Dr. Marceau were free and voluntary.

[10] The statements were not introduced into evidence; they were used by the prosecution only in questioning Felde. *Miranda*<sup>13</sup> does not preclude cross-examination on the basis of voluntary, uncoerced, prior statements which are inconsistent. *Harris v. New York*, 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed.2d 1 (1971).

The question of whether Felde was in a disassociated state and unable to remember what happened at the time of the crime was a key issue at trial.

[11] Felde was asked, "Do you recall telling Dr. Marceau that you vaguely remembered pointing the gun at the police officer and telling him to stop and let you out, and when your instructions were not followed, the officer started wrestling with you for the gun, the car hit a guard rail and the gun went off?" (Tr. 2150) Felde said he did not recall the statement and did not admit making other statements to Dr. Marceau. Dr. Marceau was not called in rebuttal. On direct examination, Dr. Marceau was not allowed to testify about the substance of what Felde told him. Since there was never any affirmative evidence that

12. Constitution of the United States, Amendment 5 provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same

offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

13. *Miranda v. Arizona*, 384 U.S. 438, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).



the statements were actually made, any error was relatively harmless. LSA-Cr.P. art. 921.<sup>14</sup> Compare *Esquivel v. State*, 96 Nev. 777, 617 P.2d 587 (1980) where the conviction was reversed because defendant was impeached with statements made to a psychiatrist in a court ordered mental examination.

The prosecution claimed in rebuttal argument to the jury that what defendant told Dr. Marceau was the truth:

"And either the doctor made it up or someone made it up and it does not fit in any way as an incriminating piece of evidence in this case that he pulled the gun and told the policeman to pull over, back in January of 1979, when Dr. Marceau spoke with the Defendant. It doesn't fit in any way at that time as incriminating evidence. In fact, it would have been more incriminating for somebody to tell him he pulled the gun and started executing the policeman. But, see, the truth is, obviously, the Defendant told Dr. Marceau what he recalled at the time, four months after the incident." (Tr. 2344)

The prosecutor was to some extent replying to an argument made by defense counsel, as follows:

"He's got a lot of opportunity to lie in this case, a lot. He had a lot of opportunity to lie in Maryland, and I submit that he didn't.

"My recollection of what Dr. Marceau said was that he seemed to be perfectly truthful. He didn't know exactly how much he remembered and how much was told to him.

"And why would he say the car hit a guardrail and went off at that time? That is what the paper said and that is what he was told, no doubt, by the people who were guarding him, or from the police reports." (Tr. 2295)

[12] What defendant told Dr. Marceau was not in evidence. Felde did not admit the statements. Therefore, these facts

14. LSA-Cr.P. art. 921 provides:

"A judgment or ruling shall not be reversed by an appellate court because of any error,

bearing on his credibility were not of record. *State v. Sayles*, 395 So.2d 695, (La., 1981). Although the prosecution's rebuttal argument was improper, defense counsel did not object. In view of the ample independent evidence that Felde was sane at the time of the offense, it is unlikely this argument carried great weight with the jury. See *State v. Moore*, 414 So.2d 340 (La., 1982); *State v. Hayes*, 364 So.2d 923 (La., 1978). Compare *State v. Carthan*, 377 So.2d 308 (La., 1979). It was only after learning that he was wanted by the police that Felde bought the pistol and shells. It was Thompson, not Felde, who was shot and Felde reloaded his gun before he was apprehended. Even one of the expert witnesses supporting defendant's insanity defense admitted that it was possible he shot officer Thompson to avoid going back to jail.

These assignments lack merit.

#### ASSIGNMENTS OF ERROR NUMBER FOUR AND FIVE

"The denial by the trial court of the Defense Motion for Court Order Commanding State Production and Disclosure of Statements and Addresses of Witnesses Favorable to the Defense; (No. 4) and

"The prosecutorial nondisclosure and suppression of exculpatory evidence of the intoxication of the accused at the time of the offense charged which exculpatory evidence was material to the question of guilt." (No. 5)

[13] As to Assignment No. 4, the state denied having any addresses for the witnesses in question more current than those in possession of defense counsel. There is no indication that there were exculpatory statements by these witnesses. Their addresses and statements were subject to discovery only if they were favorable to the defendant and material and relevant to the

defect, irregularity, or variance which does not affect substantial rights of the accused."



issue of guilt or punishment. LSA-Cr.P. art. 718, 723.<sup>13</sup>

As to Assignment No. 5, these witnesses could allegedly have testified on the question of defendant's intoxication, but there was abundant other evidence that defendant was intoxicated at the time of the crime. The prosecution denied having any information that defendant was intoxicated to the point of not knowing what he was doing, but was willing to stipulate that defendant was intoxicated.

[14] Although defense counsel argued that the prosecutor had the addresses he wanted and also exculpatory material regarding intoxication, he did not ask for an in camera examination by the trial court to settle the argument. Absent some showing that the state was suppressing exculpatory material, the trial court did not err in refusing to give defendant's counsel the prosecution's files on these witnesses.

These assignments lack merit.

#### ASSIGNMENTS OF ERROR NUMBER SIX, SEVEN, AND EIGHT

"The denial by the trial court of the Defense Motion for Court Order Com-

manding Prosecution Production of Photographs Favorable to the Defense." (No. 6)

"The granting by the trial court of the prosecution Motion to Quash Subpoena Duces Tecum." (No. 7)

"The prosecutorial nondisclosure and suppression of photographic evidence which was favorable to the accused and material to the issues of credibility and culpability." (No. 8)

Defense counsel admits that any error as to Assignment No. Seven was harmless.

[15] Defendant contends in assignments six and eight that the state had photographs of Felde which were not given to the defense, specifically shots showing Felde on the ground after being shot. It was not conclusively established that any additional photographs existed, but defense counsel argued that he had seen one in the prosecutor's office which he did not receive.<sup>14</sup> The state offered to let the court conduct an inspection of all the photographic negatives in its records. (Tr. 246) Thus, the defense could have had an in camera examination of the negatives to determine

witnesses or prospective witnesses, other than the defendant, to the district attorney, or to agents of the state."

#### 13. LSA-Cr.P. art. 718 provides:

"Subject to the limitation of Article 723, on motion of the defendant, the court shall order the district attorney to permit or authorize the defendant to inspect, copy, examine, test scientifically, photograph, or otherwise reproduce books, papers, documents, photographs, tangible objects, buildings, places, or copies or portions thereof, which are within the possession, custody, or control of the state, and which:

"(1) are favorable to the defendant and which are material and relevant to the issue of guilt or punishment, or

"(2) are intended for use by the state as evidence at the trial, or

"(3) were obtained from or belong to the defendant.

"The court may determine whether evidence is subject to the provisions of Paragraph (1) hereof by in camera inspection."

#### LSA-Cr.P. art. 723 provides:

"Except as provided in Articles 716, 718, 721, and 722, this Chapter does not authorize the discovery or inspection of reports, memoranda or other internal state documents made by the district attorney or by agents of the state in connection with the investigation or prosecution of the case; or of statements made by

14. "Many months, perhaps over a year, prior to the August 11, 1980, commencement of the Felde trial in Alexandria, defense counsel, perhaps even before he became defense counsel for Wayne Felde, was in the office of prosecutor Nesbitt on some other business. Prosecutor Nesbitt was on the telephone having an extended telephone conversation with someone and gave defense counsel permission to look through the police photographs in the Felde case which were on prosecutor Nesbitt's desk. Among the photographs were some of Wayne Felde lying on the ground shortly after being shot, at least one of which photographs was a full body shot, showing the entire person of Wayne Felde. Wayne Felde's arms were not over his head in the full body photograph although defense counsel cannot recall whether they were under him or handcuffed behind his back. But it was a full body photograph showing the entire body of Wayne Felde as he lay on his stomach after being shot." (First Supplemental Brief on Behalf of Defendant, Page 68)

if there were any photographs which had been withheld but did not avail itself of the opportunity.

[16] It is argued in connection with these assignments that the police intended to shoot Felde in cold blood. This argument is irrelevant to the real issue, the circumstances under which Felde shot officer Thompkins.

Further, the evidence does not support defendant's contention that the police attempted to execute Felde. Mr. Elzie A. Sandifer, who lives adjacent to the scene of Felde's shooting, was a defense witness who said he heard a voice say, "throw the gun down", before he heard two shots. (Tr. 1306) Mrs. Eloise Sandifer, heard a yell, "[T]hrow the gun down," before the first shot. (Tr. 1329) After the first shot, she heard "drop it". (Tr. 1330) According to her testimony, there was a warning before the first shot and an additional warning before the second shot. The uncontradicted evidence is that Felde's hands were handcuffed in front of him when he was shot. The pattern of his injuries does not prove that they must have been behind him. See Footnote 4, *supra*.

These assignments lack merit.

#### ASSIGNMENT OF ERROR NUMBER NINE

"The continuous utilization by the prosecutor of improper leading questions on direct examination of prosecution lay witnesses."

[17] When defense counsel objected to leading questions, his objections were sustained. In other instances, when defense counsel failed to object, he cannot raise the issue on appeal. LSA-Cr.P. art. 841. Leading questions are not the type of prosecutorial error which diminish the reliability of a jury's verdict. *Beck v. Alabama*, *supra*, is inapplicable. Only when there is a clear abuse of discretion which prejudices defendant's rights will a conviction be reversed because of leading questions. *State v. Swift*, 363 So.2d 499 (La., 1978); *State v. Vanderhoff*, 415 So.2d 190 (La., 1982).

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER TEN

"The improper cross-examination of the defendant by the prosecutor in the presence of the jury regarding the fact that the deceased father of the defendant had been convicted of a federal criminal offense."

[18] It is contended that asking defendant's sister, Maria Krebsbach, if her father was on probation from a federal offense when he died, together with other questions about her father's drinking problem and violence, implied that Felde was, like his father, a bad man.

Defense counsel did not object to this line of questioning. Similar information was brought out by the defense during Felde's direct testimony.

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER ELEVEN

"The improper admission into evidence by the trial court of State Exhibits 56 A and 56 b."

It is contended that the trial court should not have allowed a copy of the permanent driver's license of Felde's sister, Florence McDonald, and an enlargement of the photograph on that license into evidence. It is argued that the state's only purpose was to utilize Florence McDonald's personal unattractiveness against her defendant brother.

[19] Mr. Mustin of Lorant's testified that Florence McDonald cashed a fifty dollar check when Felde bought his gun, using a driver's license number for identification. Mustin identified the license number as the one on the check and the photograph as a depiction of the woman who cashed it. Both were relevant to the circumstances in which defendant purchased the murder weapon. The evidence was properly admitted. See *State v. Gordy*, 380 So.2d 1347 (La., 1980); *State v. Paster*, 373 So.2d 170 (La., 1979).

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER TWELVE

"The improper exclusion from evidence by the trial court of Defense Exhibit 133."

[20] It is argued that a 1975 letter written by Felde's brother-in-law, David Krebsbach, documented the changes produced in Felde from his combat in Vietnam. Thus, it corroborated the insanity defense, showed that Felde's mental condition was not a recent concoction by the defense, and should have been admitted.

The letter states: "He served in combat over in Vietnam. Upon his return from Vietnam, he was stationed nearby and resided with us. He was a changed person upon returning from Vietnam. He was very quiet and not as fun loving. Had nightmares, talking in his sleep, was nervous and twitchy, and started drinking. He was discharged honorably from the army."

The letter was properly excluded as hearsay offered to show the truth of its substance. LSA-RS. 15:434. The information in the letter was brought out during Krebsbach's testimony. This was the better evidence. Since Krebsbach testified about the letter, his 1975 opinion was given to the jury. There was no error.

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER THIRTEEN

"The improper exclusion from evidence by the trial court of Defense Exhibit 173."

[21] The trial court refused to admit in evidence a questionnaire distributed by a group called "Citizen Soldier", which was intended to identify Vietnam veterans who had suffered from exposure to "Agent Orange" (Dioxin). It is argued that inability to question Michael Uhl, the founder of Citizen Soldier, about results of the questionnaire prejudiced the defense.

17. LSA-RS. 15:275 provides:

"In the discipline of his court, the trial judge is vested with a sound discretion to stop the prolonged, unnecessary and irrelevant exami-

The questionnaire revealed unauthenticated complaints by other veterans. There was ample testimony that defendant's combat experience and exposure to Agent Orange could have created a post-traumatic stress syndrome. The questionnaire results were hearsay and essentially irrelevant to the question of whether defendant was insane at the time of the crime. The exhibit was properly excluded.

This assignment of error lacks merit.

#### ASSIGNMENT OF ERROR NUMBER FOURTEEN

"The trial court improperly restricted the scope of defense inquiry into the issue of insanity and improperly limited the evidence to be utilized by the defense in establishing the insanity of the accused at the time of the offense by the required preponderance of evidence."

[22] Defendant contends that the trial court improperly prevented him from questioning Maria Krebsbach about the effects of World War II on her father. The desired testimony was irrelevant. LSA-RS. 15:275.<sup>17</sup>

[23, 24] Defendant also alleges that defense witness Michael Uhl should have been qualified as an expert concerning the effect of Agent Orange on Vietnam veterans. Mr. Uhl had researched complaints from Vietnam veterans, but this did not qualify him as an expert on the effect of Agent Orange. Uhl was not allowed to testify about his own ability to cope with Vietnam combat because the subject was irrelevant.

[25] Defense counsel argues that the trial court erred in sustaining an objection to testimony of Linda Vandevanter, an operating room nurse in Vietnam, regarding the type of combat wounds received by Vietnam veterans and her personal feelings about the war. Both were irrelevant. There was extensive expert testimony by

nation of a witness, whether such examination be direct or cross, and even though no objection be urged by counsel."

Dr. Wilson and Dr. Figley about the effects of the Vietnam war on many of its veterans.

This assignment of error lacks merit.

#### ASSIGNMENT OF ERROR NUMBER FIFTEEN

"The granting by the trial court of the Motion by State for Independent Mental Examination of Defendant."

[26] The trial court ordered a mental examination of defendant by state experts in the middle of trial, but that order was vacated. It is argued that the prospect of the examination adversely affected defense counsel, his client, and the jury.

Since the examination never took place, the trial court's error in ordering it is moot. There is no evidence that the threat of the examination affected defense counsel or his client. There is no indication that the jury had knowledge of the proposed examination.

This assignment of error lacks merit.

#### ASSIGNMENT OF ERROR NUMBER TWENTY-EIGHT

"The repeated *sua sponte* interruptions, objections, remarks and comments, both express and implied, made by the trial court, in the presence of the jury, during the direct examination of defense witnesses, and the cross-examination of prosecution witnesses, by defense counsel, which were, no doubt, inferred by the trial jurors to be expressions of judicial opinion concerning relevant issues of facts, law and credibility bearing on the question of guilt, thereby affecting the jury in its role as ultimate trier of fact, and causing unfair prejudice to the accused."

[27] This assignment contends that the trial court made prejudicial comments on the evidence.

Once the trial court ordered counsel to "... please, let's get back to the subject matter of this case", (Tr. 1079) a proper admonition.

Maria Krebsbach said "I guess I'm lost" during the course of her testimony: the trial court commented "[t]he observation is correct" (Tr. 1553). There was no objection to the remark, which did not prejudice the defense.

When the court recessed for lunch, Ma. Krebsbach was on the stand and asked if she could leave. The reply was: "[Y]es ma'm". She said "Oh well, I ..." and was told: "[D]on't sit there for an hour and a half." (Tr. 1564) There was no objection to this comment. It was impatient but harmless.

When the prosecutor attempted to question Ma. Krebsbach about the effect of World War II on her father, the trial court, after a long dialogue, commented "You know we could get to calling everybody in World War II, maybe we should ..." (Tr. 1571). The trial court was indicating that the line of questioning was irrelevant.

During the examination of Dr. John Wilson, the trial court commented that the witness was creating a problem with his commentary and editorializing on every question. On occasion the trial court also attempted to limit irrelevant and unnecessary examination of various witnesses. LSA-RS. 15:275. However, the trial court's few remarks do not establish that any impression of the accused's guilt or innocence was conveyed to the jury. LSA-Cr.P. art. 772; *State v. Williams*, 375 So.2d 1379 (La., 1979).

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER TWENTY-NINE

"The highly improper and inflammatory manner in which the prosecutor utilized and displayed photographic evidence during his impassioned argument to the jury, for the purpose of prejudicing the minds of the jurors against the defendant, deprived the defendant of a fair and impartial trial in that it caused the jury to return a verdict which was based on prosecutorial passion and prejudice rather than on the actual evidence properly introduced at trial."

[28] Defendant contends that the state deprived defendant of a fair trial by the manner in which certain photographic evidence was used in the prosecutor's closing argument. Displaying photographs, the state argued:

"Does this look like a foxhole or a cave, or does that look like the ride back at the penitentiary?"

"Does this look like a war scene at night or does that look like a police car with sirens on top on a four lane highway in Shreveport, Louisiana? That's a ride back to the penitentiary."

"Does this look like anything you see in Vietnam. Or does that look like a ride back to the penitentiary."

"You show me something that looks like Vietnam in this picture. You decide whether this looks like Vietnam or this looks like a ride back to the penitentiary and you decide if that man did not intend to kill." (Tr. pp. 2344-2346)

The use of the evidence and the prosecutor's remarks were within the scope of proper closing argument. Moreover, there was no objection and defense counsel did not ask for an admonition or mistrial. LSA-Cr.P. arts. 770, 775.

This assignment of error lacks merit.

#### ASSIGNMENT OF ERROR NUMBER THIRTY

"The prosecutor improperly influenced the jury to unreasonably reject the insanity defense by overemphasizing, and making repeated prejudicial prosecutorial references to, the consequences of the return by the jury of a verdict of 'Not Guilty by Reason of Insanity'."

It is contended that the prosecutor's argument aroused the passions, prejudice and fears of the jurors and convinced them that an insanity verdict would result in Felde escaping or being released to the detriment of the general public. The following argument was made:

"If you find him not guilty by reason of insanity, he is not going up to Michigan,

or wherever his experts came from, and sit around with a bunch of Viet Nam veterans and talk about things. The Judge will tell you, he is going to a State Hospital until the doctors recommend he be released, and then a judge will decide when that will be six months or a year, five years, whenever a judge decides in the future, upon recommendation of doctors at a State hospital, he must be released, and the judge's decision is reviewable by the Supreme Court as to the merits of that decision. And if he lines up two or three, I mean, goes around, patting them on the back, I'm doing fine, acts real nice, just like he did in the pen, do it two, three, four years, take his medication, act great, recommend his release. And, you know, you can't keep him in jail because he is not going to be in jail. He's going to be in a hospital. He's escaped from the penitentiary. He wants to go to a hospital. He doesn't want to go to the pen for life or possibly face the death sentence. He wants to go to the hospital where he can get out. And, just like he testified, when they didn't give him parole, he got out. And what will he do when they don't turn him loose the first time he wants out?" (Tr. 2271-2272)

The jury was charged:

"If a verdict of not guilty by reason of insanity is returned in a case of this nature, the Court must commit the Defendant to a proper State mental institution or to a private mental institution approved by the Court for custody, care and treatment."

"The defendant shall not be released until and unless the court determines that he can be released without danger to himself or to others". (Tr. 2366)

[29] The prosecutor told the jury that Felde, if found not guilty by reason of insanity, would easily escape. There was no objection. Compare *State v. Sharp*, 418 So.2d 1344 (La., 1982). Because of the evidence that defendant was an escapee and intended to avoid further jail time, there was a factual basis for the argument.



LSA-Cr.P. art. 774. Although such ".... predictions of the consequences of the jury's verdict" are improper, it is unlikely, in the context of the entire argument and the court's instructions, that the error contributed to the verdict. *State v. Hayes*, supra, 364 So.2d at 926.

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER THIRTY-ONE

"The prosecution argument to the trial jury contained comments by the prosecutor to matters not in evidence, thereby adding to the actual evidence in the record through the influence of the prosecutor's official position and causing the jury to arrive at a determination of guilt by giving greater weight to the assertions of the prosecutor than to the actual legal evidence introduced at trial."

In rebuttal, the prosecutor referred to things not in evidence when he referred to the automobile seat with the bullet holes from the police car. He implied that the seat was available, but the defense did not want the jury to see it.

"The bullet holes in the seat, and I believe that we stated in the presence of the Jury the seat was present in the courthouse if anyone wanted it...." (Tr. 2333)

[30] It is argued that there was no evidence the seat was available. However, Lieutenant J.O. Blankenship testified that the car seat was present in the courthouse and several photographs of it were admitted in evidence. The brief reference to the car seat was harmless.

In his closing argument the prosecutor referred to information in Dr. Marceau's report which was not in evidence. In rebuttal the prosecution referred to statements made by Felde to Dr. Marceau and said that what Felde had said at that time was the truth.

The closing references to Dr. Marceau's report were as follows:

"He examined the Defendant on January 31st, 1979, approximately four months af-

ter the incident, and we submit approximately four months after the incident, because it is before the Defendant learned of the possibility of asserting a delayed stress defense. Dr. Marceau examined the Defendant, discussed the fact that the Defendant had been in Viet Nam, discussed the Defendant's drinking problems, the Defendant indicated extreme intoxication, and, thus, under some circumstances, not responsible for his actions, gave certain details of the offense that are not consistent with an alcohol blackout or consistent with a psychotic break or a break from reality, claimed he did not know for sure what he remembered as opposed to what he was told; but told him some things that only the persons in that car would be aware of, like, 'Pull the car over, I have a gun.' ...." (Tr. 2250)

In rebuttal, the prosecutor said:

"And either the doctor made it up or someone made it up and it does not fit in any way as an incriminating piece of evidence in this case that he pulled the gun and told the policeman to pull over, back in January of 1979, when Dr. Marceau spoke with the Defendant. It doesn't fit in any way at that time as incriminating evidence. In fact, it would have been more incriminating for somebody to tell him he pulled the gun and started executing the policeman. But, see, the truth is, obviously, the Defendant told Dr. Marceau what he recalled at the time, four months after the incident." (Tr. 2343-2344)

[31] The prosecution erred in quoting from Dr. Marceau's report in his final arguments to the jury. This report was not in evidence. Compare *McKenna v. State*, 639 P.2d 557 (Nev., 1982) where the conviction was reversed because a court appointed psychiatrist testified about admissions made by the defendant during his psychiatric examination. There was no contemporaneous objection to the comments here and defendant did not request an admonition or move for a mistrial. The argument violated LSA-Cr.P. art. 774:



"The argument shall be confined to evidence admitted, to the lack of evidence, to conclusions of fact that the state or defendant may draw therefrom, and to the law applicable to the case."

"The argument shall not appeal to prejudice."

"The state's rebuttal shall be confined to answering the argument of the defendant."

The prosecution emphasized the fact that Felde apparently told Marceau that he had pulled a gun and told Thompkins to move over, but this does not necessarily negate the defense of insanity at the time of the crime. Felde testified that it was only after the first accidental shot was fired that he did not know what he was doing.

[32] The error in quoting from Dr. Marceau's report was not so prejudicial that it requires a new trial. *State v. Sharp*, supra. The jury was charged that the prosecutor's arguments did not constitute evidence.

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER THIRTY-TWO

"The *sua sponte* judicial decision to declare a lengthy court recess following the defense closing argument and prior to the rebuttal by the prosecutor resulted in severe prejudice to the defendant, particularly in light of the failure of the trial court to declare such a recess following the closing argument of the prosecution and before the closing argument of the defense."

[33] The jury was offered a break at the conclusion of the state's closing argument, and defense counsel neither agreed nor objected. The court said: "I am talking to the jury. Are ready to go? No one needs a break, then? Okay." (Tr. 2279) Defense counsel also did not object at the time to the recess he now finds objectionable. Since there was no earlier recess, the twenty minute break for the jury after lengthy arguments was not an abuse of discretion. *State v. Gordy*, 380 So.2d 1347 (La., 1980); *State v. Telford*, 384 So.2d 347 (La., 1980); *State v. Jones*, 412 So.2d 1061 (La., 1982).

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER THIRTY-THREE

"The rebuttal argument of the prosecutor to the trial jurors exceeded the scope of the defense closing argument."

[34] Defendant complains again about the mention in rebuttal of information in Dr. Marceau's sanity commission report, cited as an example of calculated prosecutorial overreaching. Since defense counsel alluded to material in Dr. Marceau's report in closing argument, the rebuttal did not exceed the scope of the defense's closing argument. There was no contemporaneous objection, and it is unlikely that the argument had an undue influence on the jury.

[35] Defendant also objects to the overruling of his objection to the prosecution reviewing the law on manslaughter, contending this was not proper rebuttal. Defense counsel had referred to the manslaughter statute in his closing argument so the rebuttal argument was proper.

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER THIRTY-FOUR

"The judicial refusal to permit, and the unconstitutional failure of Louisiana codal provisions to provide for, defense rebuttal argument to the trial jury on the affirmative defense of insanity."

[36] The state has the right to make the last argument to the jury. *LSA-C.Cr.P. art. 765*; *State v. Wiggins*, 337 So.2d 1172 (La., 1976).

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER THIRTY-FIVE

"The Louisiana statutory presumption of sanity and the Louisiana codal provisions placing upon the defense the burden of establishing insanity at the time of the offense, are unconstitutional."

[37] Defendant's burden of proof on the affirmative defense of insanity is constitutional. *State v. Lee*, 395 So.2d 700 (La., 1981); *Leland v. Oregon*, 343 U.S. 790, 72 S.Ct. 1002, 96 L.Ed. 1302 (1962); *Patterson v. New York*, 432 U.S. 197, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977).

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER THIRTY-SIX

"The jury sequestration procedures employed by the trial court failed to properly insulate the jurors from extraneous influences, or the possibility thereof, and throughout the trial there occurred a continuing and substantial failure by the trial court to adhere to the sequestration mandated in a capital case, as repeated contacts, communications and conversations which took place between the jurors and non-juror third parties may well have resulted in the jury verdicts being based upon, and affected by, influences extraneous of the legal evidence introduced at trial."

[38] Defendant contends that the jury was not properly insulated from outside influences because the jury room was the most convenient and, at times, the only place where hot coffee could be found. These allegations are unfounded and there is no real basis for the argument.

This assignment of error lacks merit.

#### ASSIGNMENT OF ERROR NUMBER THIRTY-SEVEN

"The prejudicial professional relationship between a trial juror and a prosecution witness whose identity as a member of the sanity commission appointed by the court on motion of the prosecution did not become known by defense counsel until subsequent to the return of the jury verdict."

There was apparently a relationship between juror Martha Dominguez, a psychiatric social worker, and a state witness. The record does not reveal with which witness Martha Dominguez was acquainted. It is

contended that defense counsel thought defense rebuttal witness, Dr. Joe Ben Hayes, was the witness whom Martha Dominguez knew because the matter was brought up immediately after Dr. Hayes' rebuttal evidence in the following manner:

"BY THE COURT: Okay. I had one question here by Mrs. Dominguez. She was inquiring about any relationship that a Juror may have to a witness; and I will explain to her and to the Jury on that, if that is agreeable with you. It is almost impossible to pick a Jury that one or the other of the twelve may not have some relationship with some person to appear as a witness. My only inquiry to you, Mrs. Dominguez, is would this relationship at all affect you in rendering a fair and impartial verdict in the case? That is, can you . . . ."

"BY MRS. DOMINGUEZ:

(Juror) A. Not under the circumstances given . . . ."

"BY THE COURT: That is what I want to know . . . ."

"BY MRS. DOMINGUEZ:

(Juror) A. Not under the circumstances . . . ."

"BY THE COURT: Whatever relationship you may have to any of the witnesses, you must put it aside and disregard it and weigh the testimony of all witnesses alike, under all of the circumstances, and I will give you some brief explanation of how to evaluate testimony of witnesses, so you will not let that enter . . . ."

"BY MRS. DOMINGUEZ:

A. Not under the circumstances.

"BY THE COURT: Into your deliberation any more so than the consideration given to other witnesses . . . ."

"BY MRS. DOMINGUEZ:

(Juror) A. No, sir.

"BY THE COURT: Would not influence you because of your, perhaps, professional or personal relationship with the witness in your deliberation and rendition of verdict?"

"BY MRS. DOMINGUEZ:

A. Correct, sir.

"BY THE COURT: All right. Fine. That's, I didn't think it would but it had to be said. All right...." (Tr. 2241-2243)

Defendant alleges in brief that, after the jury commenced deliberations, the judge told him the acquaintance was with Dr. Mauroner, the state witness who testified in rebuttal as a member of the sanity commission and a specialist in psychiatry that Felde was able to distinguish right from wrong.

[35, 40] Disclosure during trial that a juror is acquainted with a witness does not necessarily prevent a fair trial. *State v. Langendorfer*, 389 So.2d 1271 (La., 1980); *State v. Daniel*, 378 So.2d 1361 (La., 1979). Defense counsel did not attempt at the time to determine the identity of the witness with whom the juror was acquainted and did not move for a mistrial or object in any manner. LSA-Cr.P. art. 841. The juror's responses indicate that her acquaintance did not affect her verdict.

This assignment lacks merit.

#### ASSIGNMENTS OF ERROR NUMBER THIRTY-EIGHT, THIRTY-NINE, FORTY, FORTY-ONE, FORTY-TWO, AND FORTY-THREE

"A preponderance of the evidence properly introduced at trial clearly established that the defendant was legally insane at the time of the offense charged." (No. 38)

"The trial jury unreasonably rejected the affirmative defense of insanity as the record of evidence did not reasonably support the finding by the jury that the defendant was both sane and guilty beyond a reasonable doubt." (No. 39)

"The circumstantial evidence relied upon in this case by the prosecution to prove the essential element of 'specific intent to kill or inflict great bodily harm' was not legally sufficient for any rational trier of fact to conclude that the requisite specific intent had been proved beyond a reasonable doubt." (No. 40)

"The evidence properly introduced at trial was insufficient for any rational trial jury to reasonably conclude that the prosecution had proved beyond a reasonable doubt that the requisite presence of the essential element of specific criminal intent was not precluded by the intoxicated or mental condition of the defendant at the time of the offense charged." (No. 41)

"The legal and competent evidence adduced at trial was not sufficient for any rational trial jury to find that every essential element of the offense of First Degree Murder had been proven beyond all reasonable doubt." (No. 42)

"The conviction in this case constitutes a deprivation of life, liberty and property without due process of law as it is based upon alleged conduct of the defendant which is totally attributable to combat infantry training, actual wartime combat experiences, and prolonged dioxin exposure, to which the defendant was subjected—but for which he was not subsequently treated—by the United States Government." (No. 43)

It is contended that the jury erred in finding Felde guilty of first degree murder and rejecting his defense of insanity at the time of the crime on the basis of the evidence presented.

[41] Defendant is correct in his contention that the expert testimony about Felde's post-traumatic stress syndrome by Dr. Wilson, Dr. Figley and Dr. Hayes, as well as the lay testimony about the affect of the Vietnam combat on Felde, is very persuasive. However, Dr. Marceau, Dr. Braswell and Dr. Mauroner, the three members of the sanity commission, all testified that defendant was sane at the time of the offense. Both Dr. Marceau and Dr. Mauroner are psychiatrists and a rational jury could have adopted their testimony over that of the defense witnesses.

[42] It is also argued that there was no evidence of specific intent to kill or inflict great bodily harm and that, in his intoxicated state and mental condition, defendant was unable to have such an intent.

There was evidence that indicated Felde deliberately killed officer Thompkins in order to escape. Felde's intoxication was apparently not total because he was able to get out of the police car, cross the median, negotiate the automobile lot, travel some additional distance and reload his gun while handcuffed.

Viewing the evidence in the light most favorable to the prosecution, a rational juror could have found that defendant failed to prove insanity by a preponderance of the evidence and that he had the specific intent to inflict great bodily harm or kill officer Thompkins. *State v. Claibon*, 395 So.2d 770 (La., 1981); *State v. Lee*, 395 So.2d 700 (La., 1981).

These assignments lack merit.

#### ASSIGNMENT OF ERROR NUMBER FORTY-FOUR

"The defendant was denied effective assistance of counsel at trial due to adherence by defense counsel to an employment condition set by the defendant that defense counsel not attempt to obtain any jury verdicts other than 'Not Guilty by Reason of Insanity' or 'Guilty of First Degree Murder' with Capital Punishment."

It is contended that defense counsel's agreement with Felde that he would not attempt to obtain any verdict other than not guilty by reason of insanity or guilty of first degree murder with capital punishment denied Felde his constitutional right to effective assistance of counsel. LSA-Const. Art. 1, § 13; U.S. Constitution, Amend. 5. Felde required this of his counsel as a condition of employment.

[43, 44] To establish ineffective representation, it must be shown that counsel did not meet the level of competency normally demanded in criminal cases. An adequate defense must be based on informed professional deliberation. *McMann v. Richardson*, 397 U.S. 759, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970); *Marzullo v. State of Maryland*, 561 F.2d 540 (4th Cir.1977), cert. denied 433 U.S. 1011 (1978); "Effective Assistance of Coun-

sel in Criminal Cases", 4:2 George Mason University Law Review at 241. Here, counsel, by agreement with his client, made an informed and deliberate decision not to ask for life imprisonment.

[45] In his closing argument defense counsel said, "first degree murder, the best thing you can do for him, if you don't go with insanity, is first degree murder with the death penalty." (Tr. 2325) This could have been a calculated ploy, an all or nothing gamble. Compare *Wiley v. Sowders*, 647 F.2d 642 (6 Cir.1981). "Under our adversary system, once a defendant has the assistance of counsel the vast array of trial decisions, strategic and tactical, which must be made before and during trial rests with the accused and his attorney. *Estate v. Williams*, 425 U.S. 501 at 512, 96 S.Ct. 1691 at 1697, 48 L.Ed.2d 126 at 135 (1976). The fact that a particular strategy is unsuccessful does not establish ineffective assistance. *Gray v. Lucas*, 677 F.2d 1086 (5 Cir.1982).

After the jury determined that Felde was guilty of first degree murder, the sentencing hearing was held immediately by agreement of counsel without objection by any of the jurors. The state presented no further evidence. The jury, during the guilt phase of trial, had heard extensive evidence about mitigating circumstances and had been exposed to a tremendous amount of sympathetic testimony about Felde. Compare *Washington v. Strickland*, 673 F.2d 879 (5 Cir.1982). The factual synopsis does not fully reflect the defense effort. Defense counsel argued at the sentencing hearing as follows:

"I think we all . . . . No, I can't say that. I feel that he has gone through hell for a long time and I can't see him going down to Angola in his condition and being subjected to what he would be subjected to there. So I am not going to ask you to do what I think would probably be the merciful thing to do. I am not going to ask you to do that myself. He is going to have to do that because I don't think I can, but I believe when you all were elected as Jurors you'd said you could apply the death penalty and I think it

would be pretty.... I think if you return the verdict that was returned you probably have to impose the death penalty, I would think." (Tr. 2383)

Wayne Robert Felde testified and advised the jury to return the death penalty and stated in response to counsel's question that he would be unable to control his future actions if the death penalty was not returned:

"BY MR. FELDE:

A. All I can say to you all is .... I would advise you to return the death penalty in this case.... Keith Oliver, I know your cousin Joe Oliver. We were cell partners for about eight (8) months.... Mr. Coker, I know one of your good friends, too, Tommy Strange. We picked this Jury and we picked them on intelligence. I consider all of you people intelligent so I hope you will take my advice, return the death penalty. Thank you.

"BY MR. THOMAS:

Q. What if .... the death penalty is not returned, Wayne, do you think you will be able to control your actions in the future? Can you guarantee them that you could control your actions if you would—(Interrupted)

A. I think other deaths will result. Yes, Mr. Thomas, I do. And that's why I suggested it, to prevent it from happening. They would be on your conscience if you can't return it. Now, I'm not trying to put you all in a bad position but you all are taking other people's lives in your hands, along with mine, so I think you should return it. I don't think no more needs to be said, Mr. Thomas. They're upset. Thank you." (Tr. 2385-2386)

Defense counsel later made a closing argument in which he said in part:

"... And at this point, I believe there is only one kind of help you can give him because I am not going to stand up here and tell you that you are doing him a favor by giving him life, because Angola is hell and for a crippled man it's hell twice over, and I think that's where he is

going to go, first degree murder of a Shreveport policeman. (Tr. 2390)

"... I'm waiting for something to come in here and tell me, you know, there's some reason I should ask you to spare this man but there's not. There, honestly, is not. There's not one reason that I can think of for him to continue to experience what he has been experiencing. I cannot think of one reason...." (Tr. 2391-2392)

Felde then made a closing argument as co-counsel:

"I'm not coming out and threatening anybody because that's not what it is. A walking time bomb, that's what it is. Somebody else will die as a result of it if I'm not put to death, I am sure. It's happened twice in eight years. There's been ten years of proof shown to you. I don't know where it went so, please, return that. I think, as countrymen, you owe me that much. I did my part. Please do yours. Okay?" (Tr. 2393)

There was no evidence other than Felde's testimony at the sentencing hearing.

In *State v. Clark*, 387 So.2d 1124 (La., 1980) defendant Clark told the jury he wanted to be sentenced to death but his counsel argued mitigating circumstances to the jury. Here, even after the guilty verdict, both Felde and his counsel pressed for the death penalty at the penalty phase of trial. After the jury rejected the claim of not guilty by reason of insanity, there is a grave question whether counsel could honor the agreement with his client and maintain a plea for the death penalty.

In *Bishop v. State*, 95 Nev. 511, 597 P.2d 273 (1979) defendant was allowed to represent himself, but the court appointed standby counsel. At the sentencing hearing, the state presented evidence of five aggravating circumstances: defendant refused to present any evidence of mitigating circumstances. Standby counsel informed the court that there were mitigating circumstances Bishop refused to allow them to present. Subsequently, on appeal, it was claimed that the court panel erred in not



bearing evidence of mitigating circumstances. The court stated:

"In the case at hand, Bishop had ample opportunity to present evidence of mitigating circumstances; however, he made it clear that he did not want to present or have standby counsel present such evidence. He had a Sixth Amendment right not to have counsel forced upon him. *Faretta v. California*, [422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562] supra. When a defendant knowingly and voluntarily waives his right to counsel, as here, his refusal to present a defense does not negate his *pro per* election. *People v. Teron*, supra [23 Cal.3d 131, 151 Cal.Rptr. 653, 588 P.2d 773 (Cal., 1979)]. 'Under *Faretta*, the state may not constitutionally prevent a defendant charged with a commission of a criminal offense from controlling his own fate by forcing on him counsel who may present a case which is not consistent with the actual wishes of the defendant.' *Curry v. Superior Court*, 75 Cal.App.3d 221, 141 Cal.Rptr. 884, 887 (1977). For this reason, the sentencing tribunal did not err when it did not delve into the mitigating evidence referred to by the standby counsel." 597 P.2d 376.

[46-50] In the *Bishop* case an application for stay of execution was denied by the United States Supreme Court. *Lenhard v. Wolff*, 444 U.S. 807, 100 S.Ct. 29, 62 L.Ed.2d 20 (1979). The dissent claimed that the death penalty was being triggered by the arbitrary factor of the defendant's decision to acquiesce in his own death. However, that was not the view of the majority of the court. See *Gilmore v. Utah*, 429 U.S. 1012, 97 S.Ct. 436, 50 L.Ed.2d 632 (1976).<sup>18</sup> *Bishop* controls this issue. Felde, mentally competent to stand trial and enrolled as co-counsel, had a constitutional right to impose a condition of employment on his counsel.

18. "After carefully examining the materials submitted by the State of Utah, the Court is convinced that Gary Mark Gilmore made a knowing and intelligent waiver of any and all federal rights he might have asserted after the Utah trial court's sentence was imposed, and, specifically, that the State's determina-

*Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). Thus, a defendant can limit his defense consistent with his wishes at the penalty phase of trial. *Bishop*, supra. A defendant can also waive post-conviction habeas corpus remedies. *Gilmore*, supra. A defendant cannot waive his right to appeal a death sentence. LSA-Cr.P. art. 905.9; *People v. Stanworth*, 71 Cal.2d 830, 80 Cal.Rptr. 49, 457 P.2d 889 (1969); *Goode v. State*, 365 So.2d 381 (Fla., 1978). Felde has had an excellent presentation of his appeal. Counsel's agreement not to ask the jury for life imprisonment does not invalidate his conviction or sentence.

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER FORTY-FIVE

"The defendant was denied his right to effective assistance of counsel by the failure of defense counsel to voice timely contemporaneous objections, to request appropriate jury admonitions, and to move for mistrials, in numerous trial situations where the circumstances presented clearly required that such action be undertaken in order to protect and preserve the rights of defendant."

[51] Defense counsel claims that he denied Wayne Felde effective assistance of counsel. On the contrary, the record reveals that he made an unusually vigorous and spirited defense. The representation here was within the upper range of competence.

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER FORTY-SIX

"Newly discovered evidence of Post-Traumatic Stress Disorder, which was not discoverable before or during the trial

tions of his competence knowingly and intelligently to waive any and all such rights were firmly grounded.

"Accordingly, the stay of execution granted on December 3, 1976, is hereby terminated." *Gilmore*, supra, 429 U.S. at 1013, 97 S.Ct. at 437, 50 L.Ed.2d at 633.



despite the exercise of reasonable diligence, would probably have changed the jury verdict of 'guilty' to a verdict of 'not guilty by reason of insanity', had that evidence been available for introduction at trial."

Defendant contends that, after the verdicts were rendered, counsel first received addresses for three of the eight members of Wayne Felde's unit in Vietnam. It is argued that a new trial should have been granted, because this testimony, not previously available, would have substantiated the defense of post-traumatic stress disorder.

[52] The expert and lay testimony on this point was quite comprehensive and the desired testimony would merely have been cumulative. LSA-Cr.P. art. 854<sup>19</sup> provides that the newly discovered whereabouts or residence of a witness does not constitute newly discovered evidence. Further there was no statement of the facts which would be established by this new evidence. The new trial was properly denied.

This assignment of error lacks merit.

#### ASSIGNMENT OF ERROR NUMBER FORTY-SEVEN

"The unreasonable and arbitrary *ex parte* action of the trial court in summarily quashing defense process which had properly issued for the hearing on the Defense Motion for New Trial."

Defense counsel subpoenaed the prosecutor for the hearing on the motion for new trial but the trial court excused the prosecutor from the subpoena.

19. LSA-Cr.P. art. 854 provides:

"A motion for new trial based on ground (3) of Article 851 shall contain allegations of fact, sworn to by the defendant or his counsel, showing:

"(1) That notwithstanding the exercise of reasonable diligence by the defendant, the new evidence was not discovered before or during the trial;

[53] Since the subpoena was served late and the prosecutor was unable to appear, the trial court was within its discretion in quashing the subpoena on the ground that it was oppressive.

This assignment of error lacks merit.

#### ASSIGNMENT OF ERROR NUMBER FORTY-EIGHT

"The denial by the trial court of the Defense Motion for New Trial."

[54] Defendant contends that a new trial should have been granted because DSM-III, the Diagnostic and Statistic Manual III of the American Psychiatric Association first recognized post-traumatic stress disorder in 1980, only months prior to trial. However, there was trial testimony that the American Psychiatric Association recognizes this disorder. Although the DSM-III has been adopted in Louisiana hospitals since the trial, this factor is not so material that it would be likely to produce a different result. *State v. Talbot*, 408 So.2d 861 (La., 1981).

This assignment lacks merit.

#### ASSIGNMENT OF ERROR NUMBER FORTY-NINE

"The failure of the trial court to grant the Defense Motion for Payment of Trial Expenses."

[55] This assignment of error is irrelevant to defendant's appeal.

#### ASSIGNMENT OF ERROR NUMBER FIFTY

"The Uniform Capital Sentence Report of the trial judge."

"(2) The names of the witnesses who will testify and a concise statement of the newly discovered evidence;

"(3) The facts which the witnesses or evidence will establish; and

"(4) That the witnesses or evidence are not beyond the process of the court, or are otherwise available.

"The newly discovered whereabouts or residence of a witness do not constitute newly discovered evidence."

[56] Defense counsel contends that the uniform capital sentencing report submitted by the trial judge reflects a negative attitude toward the defendant because it contains erroneous information and that this attitude toward the defendant was conveyed to the jury during trial.

The report is inaccurate in two particulars. It states that defendant completed the eleventh grade, whereas he graduated from high school. It states that Felde was sentenced to fifteen years for second degree murder and five years concurrently for four counts of assault, but the second degree murder conviction was reversed. Defendant received a total of twelve years when he pled guilty to manslaughter and four counts of assault. This erroneous information could not have had any bearing on the jury's decision because the correct information was introduced in testimony at trial. The trial transcript does not establish a negative attitude by the trial court; the errors in the sentencing report were apparently inadvertent.

[57] Defendant also contends that he did not receive a copy of the capital sentence report as required by LSA-Cr.P. art. 905.9.1, § 3.<sup>20</sup> However, this technical omission did not harm the defendant.

This assignment lacks merit.

#### DEATH SENTENCE REVIEW

Under LSA-Cr.P. art. 905.9.1, every sentence of death is reviewed for excessiveness on the basis of three factors:

28. LSA-Cr.P. art. 905.9.1, § 3 provides:

"(a) Whenever the death penalty is imposed, the trial judge shall expeditiously complete and file in the record a Uniform Capital Sentence Report (See Appendix B). The trial court may call upon the district attorney, defense counsel and the department of probation and parole of the Department of Corrections to provide any information needed to complete the report.

"(b) The trial judge shall cause a sentence investigation to be conducted and the report to be attached to the uniform capital sentence report. The investigation shall inquire into the defendant's prior delinquent and criminal activity, family situation and background, education, economic and employment status, and any other relevant matters

- (a) Whether the sentence was imposed under the influence of passion, prejudice, or any other arbitrary factors;
- (b) Whether the evidence supports the jury's finding of a statutory aggravating circumstance; and
- (c) Whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

[58] A. There is no indication that the sentence was imposed under the influence of passion, prejudice or any other arbitrary factors.

[59] B. The fact, as the jury found pursuant to LSA-Cr.P. art. 905.4(b), that the victim was a peace officer performing his regular duties is an adequate aggravating circumstance. "There is a special interest in affording protection to these public servants who regularly must risk their lives in order to guard the safety of other persons and property." *Roberts v. Louisiana*, 431 U.S. 633 at 636, 97 S.Ct. 1993 at 1995, 52 L.Ed.2d 637 at 641 (1977).

The evidence supports the jury's finding of this statutory aggravating circumstance.

[60] C. The sentence review memorandum filed by the state reflects that no death penalty has been imposed in Rapides Parish since January 1, 1976, and there have been no verdicts of first degree murder. The homicides involving a charge of first degree murder have been plea bar-

concerning the defendant. This report shall be sealed, except as provided below.

"(c) Defense counsel and the district attorney shall be furnished a copy of the completed Capital Sentence Report and of the sentence investigation report, and shall be afforded seven days to file a written opposition to their factual contents. If the opposition shows sufficient grounds, the court shall conduct a contradictory hearing to resolve any substantial factual issues raised by the reports. In all case, the opposition, if any, shall be attached to the reports.

"(d) The preparation and lodging of the record for appeal shall not be delayed pending completion of the Uniform Capital Sentence Report."

gained to a charge of second degree murder or a lesser offense. None of the other murder cases involve the situation where a police officer has been killed. Thus, there are no similar cases, and this sentence cannot be held disproportionate to sentences in other cases.

For the foregoing reasons, the conviction and sentence of defendant, Wayne Robert Felde, are affirmed.

#### AFFIRMED.

DENNIS, J., concurs with reasons.

DENNIS, Justice, concurring.

I respectfully concur.

Normally, a defendant in a capital sentence hearing is entitled to a reasonably effective defense counsel acting as a diligent, conscientious advocate for his life. *State v. Myles*, 389 So.2d 12 (La.1980). The constitutional right may be waived, however, and there is clear and convincing evidence in this record, as the majority opinion says, that the defendant knowingly and voluntarily waived the right to have his counsel plead for his life. Accordingly, I concur, being of the opinion that, except in the case of a valid proven waiver, as in the present case, the failure of a defense attorney to act as a conscientious advocate for his client's life in a capital case will constitute a denial of effective representation.

#### ON REHEARING

##### PER CURIAM.

The state submits that the sentence memorandum compiled in compliance with LSA-Cr.P. art. 905.9.1. omitted the death sentence imposed on Avery C. "Pete" Moore. Moore was convicted of first degree murder in Rapides Parish on March 11, 1982. The jury recommended that a death sentence be imposed and Moore was sentenced accordingly on May 5, 1982. His appeal is pending: *State v. Moore*, Docket No. 82-KA-1709.

Moore is a sixty-four year old white male with a low I.Q. who was convicted of joining with two other men in abducting, rob-

bing, and killing a store clerk. The jury found that the aggravating circumstances were: aggravated kidnapping; armed robbery; and an especially cruel crime. Moore, had a previous conviction for the manslaughter of his wife on October 6, 1967, and had been released from prison within two years of the present offense.

There is a significant similarity between Moore's record and Felde's: both had prior convictions for manslaughter. The sentence of Robert Wayne Felde is not disproportionate to that of Avery C. "Pete" Moore.

Rehearing denied.



Linda B. DODD

v.

NICOLON CORPORATION, et al.

No. 82-C-8790.

Supreme Court of Louisiana.

Oct. 29, 1982.

Rehearing Denied Dec. 17, 1982.

Employee brought suit against employer and its insurer for benefits for permanent total disability and for penalties and attorney fees. The 19th Judicial District Court, East Baton Rouge Parish, William H. Brown, J., dismissed the case, and employee appealed. The Court of Appeal affirmed in its original hearing and on rehearing, 409 So.2d 1236, the appellate court again refused to grant employee any disability benefits but awarded her penalties and attorney fees, and further review was sought. The Supreme Court, Blanche, J., held that preponderance of evidence established that employee, whose work-related injury to her knees prevented her from performing significant physical tasks which

4  
**Supreme Court of Louisiana**

NEW ORLEANS, 70112

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE # 142

FROM: CLERK OF SUPREME COURT OF LOUISIANA

On the 17th day of December, 1982, the following action was taken by the Supreme Court of Louisiana, composed of Chief Justice John A. Dixon, Jr., and Associate Justices Pascal F. Calogero, Jr., Walter F. Marcus, Jr., James L. Dennis, Fred A. Blanche, Jr., Jack Crozier Watson, and Harry T. Lemmon, in the cases listed below:

REHEARINGS DENIED:

81-KA-0998 State v. Wayne Robert Felde  
See Per Curiam

81-KA-2627 State v. Joe D. Carter

81-KA-2629 State ex rel Alex Elaire v. Blackburn, Warden  
DIXON, C.J., CALOGERO & DENNIS, J.J., would grant a rehearing.  
LEMMON, J., concurs with reasons.

81-KA-2717 State v. Alex Robinson

81-KA-2990 State v. Sammy Bernard and Clarence Simmons

82-C-0025 New Orleans Firefighters Association, et al v. City Civil  
Service Commission of the City of New Orleans, et al  
(3 applications)  
DIXON, C.J., MARCUS & BLANCHE, J.J., would grant a rehearing.

82-KA-0219 State v. Willie J. Robinson, Jr.  
CALOGERO & DENNIS, J.J., would grant a rehearing.

82-C-0594 Naomi Carter, et al v. City Parish Government of  
Baton Rouge, et al

82-C-0790 Linda B. Dodd v. Nicolon Corporation, et al

**308.30 Post-traumatic Stress Disorder, Acute****309.81 Post-traumatic Stress Disorder, Chronic or Delayed**

The essential feature is the development of characteristic symptoms following a psychologically traumatic event that is generally outside the range of usual human experience.

The characteristic symptoms involve reexperiencing the traumatic event; numbing of responsiveness to, or reduced involvement with, the external world; and a variety of autonomic, dysphoric, or cognitive symptoms.

The stressor producing this syndrome would evoke significant symptoms of distress in most people, and is generally outside the range of such common experiences as simple bereavement, chronic illness, business losses, or marital conflict. The trauma may be experienced alone (rape or assault) or in the company of groups of people (military combat). Stressors producing this disorder include natural disasters (floods, earthquakes), accidental man-made disasters (car accidents with serious physical injury, airplane crashes, large fires), or deliberate man-made disasters (bombing, torture, death camps). Some stressors frequently produce the disorder (e.g., torture) and others produce it only occasionally (e.g., car accidents). Frequently there is a concomitant physical component to the trauma which may even involve direct damage to the central nervous system (e.g., malnutrition, head trauma). The disorder is apparently more severe and longer lasting when the stressor is of human design. The severity of the stressor should be recorded and the specific stressor may be noted on Axis IV (p. 26).

The traumatic event can be reexperienced in a variety of ways. Commonly the individual has recurrent painful, intrusive recollections of the event or recurrent dreams or nightmares during which the event is reexperienced. In rare instances there are dissociativelike states, lasting from a few minutes to several hours or even days, during which components of the event are relived and the individual behaves as though experiencing the event at that moment. Such states have been reported in combat veterans. Diminished responsiveness to the external world, referred to as "psychic numbing" or "emotional anesthesia," usually begins soon after the traumatic event. A person may complain of feeling detached or estranged from other people, that he or she has lost the ability to become interested in previously enjoyed significant activities, or that the ability to feel emotions of any type, especially those associated with intimacy, tenderness, and sexuality, is markedly decreased.

After experiencing the stressor, many develop symptoms of excessive autonomic arousal, such as hyperalertness, exaggerated startle response, and difficulty falling asleep. Recurrent nightmares during which the traumatic event is relived and which are sometimes accompanied by middle or terminal sleep disturbance may be present. Some complain of impaired memory or difficulty in concentrating or completing tasks. In the case of a life-threatening trauma shared with others, survivors often describe painful guilt feelings about surviving when many did not, or about the things they had to do in order to survive. Activities or situations that may arouse recollections of the traumatic event are

---



often avoided. Symptoms characteristic of Post-traumatic Stress Disorder are often intensified when the individual is exposed to situations or activities that resemble or symbolize the original trauma (e.g., cold snowy weather or uniformed guards for death-camp survivors, hot, humid weather for veterans of the South Pacific).

**Associated features.** Symptoms of depression and anxiety are common, and in some instances may be sufficiently severe to be diagnosed as an Anxiety or Depressive Disorder. Increased irritability may be associated with sporadic and unpredictable explosions of aggressive behavior, upon even minimal or no provocation. The latter symptom has been reported to be particularly characteristic of war veterans with this disorder. Impulsive behavior can occur, such as sudden trips, unexplained absences, or changes in life-style or residence. Survivors of death camps sometimes have symptoms of an Organic Mental Disorder, such as failing memory, difficulty in concentrating, emotional lability, autonomic lability, headache, and vertigo.

**Age at onset.** The disorder can occur at any age, including during childhood.

**Course and subtypes.** Symptoms may begin immediately or soon after the trauma. It is not unusual, however, for the symptoms to emerge after a latency period of months or years following the trauma.

When the symptoms begin within six months of the trauma and have not lasted more than six months, the acute subtype is diagnosed, and the prognosis for remission is good. If the symptoms either develop more than six months after the trauma or last six months or more, the chronic or delayed subtype is diagnosed.

**Impairment and complications.** Impairment may either be mild or affect nearly every aspect of life. Phobic avoidance of situations or activities resembling or symbolizing the original trauma may result in occupational or recreational impairment. "Psychic numbing" may interfere with interpersonal relationships, such as marriage or family life. Emotional lability, depression, and guilt may result in self-defeating behavior or suicidal actions. Substance Use Disorders may develop.

**Predisposing factors.** Preexisting psychopathology apparently predisposes to the development of the disorder.

**Prevalence.** No information.

**Sex ratio and familial pattern.** No information.

**Differential diagnosis.** If an Anxiety, Depressive, or Organic Mental Disorder develops following the trauma, these diagnoses should also be made.

In Adjustment Disorder, the stressor is usually less severe and within the range of common experience; and the characteristic symptoms of Post-traumatic Stress Disorder, such as reexperiencing the trauma, are absent.

---

**Diagnostic criteria for Post-traumatic Stress Disorder**

**A.** Existence of a recognizable stressor that would evoke significant symptoms of distress in almost everyone.

**B.** Reexperiencing of the trauma as evidenced by at least one of the following:

- (1) recurrent and intrusive recollections of the event
- (2) recurrent dreams of the event
- (3) sudden acting or feeling as if the traumatic event were reoccurring, because of an association with an environmental or ideational stimulus

**C.** Numbing of responsiveness to or reduced involvement with the external world, beginning some time after the trauma, as shown by at least one of the following:

- (1) markedly diminished interest in one or more significant activities
- (2) feeling of detachment or estrangement from others
- (3) constricted affect

**D.** At least two of the following symptoms that were not present before the trauma:

- (1) hyperalertness or exaggerated startle response
- (2) sleep disturbance
- (3) guilt about surviving when others have not, or about behavior required for survival
- (4) memory impairment or trouble concentrating
- (5) avoidance of activities that arouse recollection of the traumatic event
- (6) intensification of symptoms by exposure to events that symbolize or resemble the traumatic event

**SUBTYPES**

**Post-traumatic Stress Disorder, Acute**

**A.** Onset of symptoms within six months of the trauma.

**B.** Duration of symptoms less than six months.

**Post-traumatic Stress Disorder, Chronic or Delayed**

Either of the following, or both:

- (1) duration of symptoms six months or more (chronic)
  - (2) onset of symptoms at least six months after the trauma (delayed)
-

**300.00 Atypical Anxiety Disorder**

This category should be used when the individual appears to have an Anxiety Disorder that does not meet the criteria for any of the above specified conditions.

---

1 Q Okay....

2 A For about three (3) years.

3 Q All right. Any other connections besides mental

4 health in the Mental Health Center in Shreveport

5 and the....in connection with the coroner's office?

6 A No, sir. No other public service.

7 Q Other than your present job right now?

8 A That's right. I was....a member of the faculty at

9 LSU Medical School.

10 Q All right. In Psychiatry?

11 A In Psychiatry.

12 Q All right, sir. In connection with your appointment

13 to the Sanity Commission, did you have occasion to

14 visit my client, Wayne Felde, in the Caddo Parish

15 Jail?

16 A Yes, sir.

17 Q And what date did you go see him on, Dr. Marceau?

18 A I saw him on....January the 31st, 1979.

19 Q Do you know how long it was that he had been in jail

20 as of that time?

21 A ....I don't....know except what he'd told me.

22 Q With regard to his condition at that time, what type

23 of physical condition did you perceive him to be in?

24 A ....he had....apparently, somewhat of a deficiency

25 in his walk. I don't remember exactly if he used....

26 any particular aids to walk with but he did have some

27 problems with his legs from what I....I remember.

28 Q You don't remember anything else about his personal

29 appearance or anything. Is that right?

30 A Well, he....he was fairly well-groomed for....a

31 prison inmate and came into the....interview quite

1 readily, and....seemed to be in fairly good control  
2 of himself at that time.

3 Q Seemed to be in real good spirits?

4 A He seemed to....be in fairly good spirits during  
5 most of the interview anyway.

6 Q Uh-huh. Right. Did you....he didn't complain of  
7 ....make any complaints to you regarding his physical  
8 condition, did he?

9 A Well, he did say that he didn't feel too good yet  
10 and he was....he had been wounded and....had....  
11 recently got out....gotten out of the hospital. I  
12 understand that he was in....what was Confederate  
13 Memorial Hospital at that time, I believe. It is  
14 now LSU Medical School Hospital.

15 Q He didn't mention anything to you about any problems  
16 he was having with any of the jailers or any  
17 problems he was having with his medication or any-  
18 thing?

19 A No, he didn't....really complain about that....  
20 situation.

21 Q Okay. How many times....how many more times did you  
22 see him?

23 A I just saw him that one time.

24 Q Oh, on that one (1) occasion?

25 A Right.

26 Q How long did you stay up there?

27 A Oh, about an hour, an hour and fifteen minutes, I  
28 imagine.

29 Q Okay. Did he appear to be.... You said he appeared  
30 to be....to want to be cooperative with you?

31 A Yes, he was cooperative.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

CROSS EXAMINATION

BY MR. NESBITT:

Q Dr. Marceau, would you tell us what you recall the Defendant said happened that evening?

BY MR. THOMAS: Your Honor, I strenuously object and if....this isn't the time. If Mr. Nesbitt wants to bring that out, this isn't the time to do it, and if he wants to have any rebuttal, that's fine with me, but at this time, the State moved for the Sanity Commission and they appointed the coroner, a man here, who has had numerous contacts with the State, and another deputy coroner to examine this man. And with regard to any statements, there is a privilege, when the State moves for a Sanity Commission, there is a patient-psychiatrist privilege and that can't come out until such time as they might want to impeach Mr. Felde's testimony. At this time, there is a definite privilege there and we can find the cases, Your Honor. And Mr. Nesbitt, I submit is aware of that.

BY THE COURT: It is my understanding of the law, and I will let you look up some more, if you want, in a short period of time, but when you put him on the stand any privilege you had was waived, and he was called, this witness....

BY MR. THOMAS: That's not correct, Your Honor....

BY THE COURT: Was called by you. Well, I think that is the law.

1 BY MR. THOMAS:

Well, we'll....

2 I mean....

3 BY THE COURT:

If you have....

4 BY MR. THOMAS:

Let me put it,

5 that's not my, I might be wrong....

6 BY THE COURT:

7 A case you want  
8 to show me to the contrary, I will be happy to look  
9 at it, but I haven't seen one. Get the slip from  
10 this lady here and let me look at this slip and we  
11 will take a recess. Certainly, we will do that when  
12 we come back. We will take a recess at this time.  
13 The question from Mrs. Dominguez was that she wanted  
14 to know a little more background on the Doctor's  
15 qualifications. So when we come back, Doctor, if  
16 you don't have a resume with you, maybe you can jot  
17 down something to give us a little more background  
18 on your education, training, and experience as we,  
19 in the legal profession, spout out....

20 All right, I will be glad to do so.

21 BY THE COURT:

Do you need a

22 pad or something? Do you want to....

23 A Yes, I need a blank sheet.

24 BY THE COURT:

I have got some-

25 thing here for him. Here you are, sir.

26 A Thank you.

27 BY THE COURT:

Okay. Take the

28 Jury out, please.

29 JURY REMOVED FROM COURTROOM

ARGUMENT ON BEHALF OF DEFENDANT

BY MR. THOMAS:                      Your Honor,  
number one, I would like to expand my objection from  
merely the physician-patient privilege, statutory  
privilege, to also include the Constitutional privilege  
against the right, where a defendant has the right not  
to incriminate himself in a criminal proceeding.

And the basis of my objection for the  
Constitutional privilege which we assert in support of  
our objection is the fact that the Minutes will reflect  
the State moved for the Sanity Commission in this case,  
Mr. Felde was compelled to meet with the psychiatrists,  
at which time, information was taken from him regarding  
this case.

We would submit that the holdings of  
the Louisiana Supreme Court, initially, in State vs.

which may or may not be integral part of the  
decision but we submit it is the law as reiterated in  
State vs. Jones, which is a 1978 case, 359 So. 2d 95,  
in which the Louisiana Supreme Court stated that no  
inculpatory statements made to the examiner are admissible  
in evidence at the merit trial of the defendant's guilt  
or innocence due to the fact that a sanity commission is  
not a critical stage of the proceeding in which the  
presence of counsel is required. That is the basis for

our Fifth Amendment privilege and we submit there was no waiver of the privilege as we did not ask any specific questions regarding specific information which Mr. Felde had given to the psychiatrist. In fact, the broadest question asked was what Dr. Marceau's opinion was based on, what Mr. Felde told him, he remembered or what was told to him, and he stated both and that his recollection was very vague. The defense did not pursue that any further.

With regard to the physician-patient privilege, in State v. O'Quinn, we would submit that the Supreme Court in that case, located at 362 So. 2d 503, rendered in 1978, said that the limitation, the only limitation where a defendant waives that privilege by tendering his mental state as an issue in the trial, the Supreme Court said the only limitation there announced is that by tendering his mental health as an issue the defendant waives the privilege, saying of physician-patient privilege, only as to such information as is genuinely relevant to the narrow issue there tendered providing that its probative value outweighs its prejudicial effect. And we submit strenuously that any, the type of information that Mr. Nesbitt is trying to bring out at this stage of the proceeding would certainly, the prejudicial effect would far outweigh the probative value and, therefore, that is the basis of our objection on both of those particular grounds.

BY THE COURT: All right. Hear  
from the State.

ARGUMENT ON BEHALF OF STATE

BY MR. NESBITT:

Your Honor,

the defense has changed their objection to rely on the Fifth Amendment. We need to make clear, we are not offering anything Mr. Felde may have said for the truth of it. We are just offering it for the fact that he said it to the Doctor as the basis of the Doctor's opinion.

We would submit, first of all, the Defendant raised the issue of sanity by pleading not guilty by reason of insanity and the law requires the Court to appoint a Sanity Commission at that point. At that point, the privilege that may otherwise exist between the defendant and examining physicians protecting any information he provided those physicians is waived insofar as that information is contained in the reports and the knowledge of the physicians on which their opinion is based as to the defendant's sanity.

That privilege would remain intact at a trial on the issue of the merits of the defendant's guilt or innocence until and unless the defendant elected to present evidence addressing his insanity, at which time, we submit, that whatever Fifth Amendment privilege otherwise would have existed that, in effect, is waived along with the physician-patient privilege at that stage.

The Defendant has called the gentleman to the witness stand and asked him his opinion and the



basis of his opinion and specifically inquired whether Mr. Felde told him about the incident, something to that general nature.

The Baoguo case is easily distinguishable in that Baoguo dealt with a defendant who did not raise the issue of insanity but only the defendant's capacity to proceed. The law, at that point, requires the court to appoint a commission solely for that purpose. A commission was appointed for that purpose. The report was rendered to the court as to the defendant's capacity to proceed. At trial, insanity was not an issue, the State tried to call the psychiatrists, who examined the defendant, on the issue of capacity to proceed and asked them about the defendant's statements to them which was privileged at that point, not waived by the defendant and not an issue at the trial.

The Harris vs. New York case would certainly answer any Constitutional Fifth Amendment questions in that if there is, in fact, a privilege that is in existence here, regarding the Fifth Amendment, we have a situation where the basis of the Doctor's opinion is the Defendant's statement, although, we are not offering the Defendant's statement for the truth of it, we would submit that the statement itself will be inconsistent with other statements made by the Defendant that have already been placed before the Jury in connection with his testimony at a previous trial.

BY THE COURT:

Sir?

BY MR. NESBITT:

The Fifth Amend-

ment does not stand to allow....

BY THE COURT: Oh, what you mean, the statements....you are contending that the statements made to the doctor or inconsistent with the statements that he made at the McDonald trial?

BY MR. NESBITT: At the McDonald trial, they are inconsistent with the contention of Mr. Thomas in his opening statement as to the Defendant's version of the facts, his memory of the facts, his degree of intoxication, what does or does not recall. It is, as a whole, inconsistent with the position the Defendant is now taking, and it is also inconsistent with other matters that have been explained to the Jury in opening statement regarding the "Agent Orange" and all of the stress syndrome business.

So we would submit, first of all, any privileges waived when the Defendant specifically raised the issue....

BY MR. THOMAS: Your Honor....

BY MR. NESBITT: And that the Fifth Amendment should not stand to allow the Defendant to place on the stand a psychiatrist and then shield from the Jury the basis of that opinion which is solely the information the Defendant elected to give the psychiatrist whether it is true or not.

- - - - -

BY MR. THOMAS: Just as to the new point that he raised there, Your Honor. We would

request that should the Court consider the fact that there might be any inconsistencies in opening statement and the McDonald testimony as opposed to what he told Dr. Marceau, that there be a judicial examination of that material because we don't know of any inconsistencies between what he told Dr. Marceau and that.

Secondly....

BY THE COURT: Well, at this point, I don't think that you can bring it up to show that what the witness told someone is inconsistent with what the attorney says at the opening statement. I don't know about that type of an impeachment. I don't know who you are impeaching. Are you impeaching the Defendant or the....

BY MR. THOMAS: Impeaching me.

BY THE COURT: Attorney.

BY MR. THOMAS: The only other two things I'd say is that he didn't....

BY THE COURT: Well....

BY MR. THOMAS: He did not elect to tell Dr. Marceau that, really. He was forced to. And the other thing, of course, being the fact that the State has rebuttal. They would certainly have an opportunity on rebuttal and I think if they....if he even attempted to present it here, we would have grounds for a mis-trial.

BY THE COURT: Well, that is going to give me some concern, I guess at one stage of the proceedings, as to what right they may have to come

in, in rebuttal, and show that he made prior inconsistent statement. But the Court is seriously concerned with the waiver. If I accept the State's proposition that there is a waiver, then it would seem to me that every time a defendant pleads not guilty by reason of insanity, he automatically waives his Fifth Amendment rights.

BY MR. NESBITT: Could I address that point?

BY THE COURT: That bothers me.

BY MR. NESBITT: Your Honor....

BY THE COURT: Because the only way he can....

BY MR. NESBITT: That is....

BY THE COURT: Can plead insanity is to have a mental examination and if, at that mental examination, he has to tell those physicians everything he knows in order for them to make a proper evaluation, then that can always be brought out, so wouldn't it be tantamount to, in every case, a waiver of the Fifth Amendment?

BY MR. NESBITT: No, sir, we don't submit that, on the defendant's plea, the Fifth Amendment is waived. The Fifth Amendment comes into play if the inculpatory evidence is either used....inculpatory statement, assuming it is true, may be a completely exculpatory. He may have told Dr. Marceau a completely exculpatory version.

BY THE COURT: Well, if it was exculpatory, I wouldn't be worried about it.

BY MR. NESBITT: Yes, sir. That is the whole point. We submit that the essence of what he told Dr. Marceau regarding intoxication as a defense is totally exculpatory, and that is in the Sanity Commission Report itself.

BY THE COURT: I don't know what you seek to get from the Doctor....

BY MR. NESBITT: All right, sir.

BY THE COURT: Does someone have a report that I may look at....

BY MR. NESBITT: It should be in the record....

BY THE COURT: It at noon?

BY MR. THOMAS: I have got it right here. And he....since he doesn't say that he was ....it is exculpatory with regard to intoxication, Your Honor, I think it might be, he might have mentioned that issue but....

BY MR. NESBITT: If we can clarify.

BY MR. THOMAS: Of course, we are....

BY MR. NESBITT: We do not contend..

BY THE COURT: I would like to have a copy of the report and the statements that were made so that I can look at them, and maybe we're....

BY MR. THOMAS: Your Honor....

BY MR. NESBITT: The statements....

BY THE COURT: In a moot matter....



BY MR. NESBITT:                   The statements....  
BY MR. THOMAS:                   On their face,  
they would appear to the Jury to be very inculpatory at  
this point in the proceedings.

BY THE COURT:                   No....  
BY MR. NESBITT:                   The statements....  
BY THE COURT:                   I don't know  
whether they are or not.

BY MR. NESBITT:                   The statements  
concerning the Defendant's degree of intoxication could  
have been misrepresented by the Defendant intentionally  
to the Doctor relying on the defense of intoxication at  
that stage. Now....

BY THE COURT:                   All right....  
BY MR. NESBITT:                   I want to make  
clear that we do not contend that when the Defendant  
raises the issue of sanity, any Fifth Amendment privilege  
is waived because the Fifth Amendment comes into play in  
protecting the Defendant from giving inculpatory infor-  
mation and if the Defendant were to give information to  
a psychiatrist and that information were to be used to  
discover additional evidence against the accused, I would  
submit the propriety of suppressing that evidence would  
be a very serious issue. If the Defendant's version of  
what happened or his statement in any regard were offered  
by the State, and we are not offering anything. We are  
cross examining the Defendant's witness....

BY THE COURT:                   I understand  
the state of the proceeding....

BY MR. NESBITT: Yes, sir. If that is offered by the State to a Jury or a trier of fact on the issue of guilt or innocence, the Fifth Amendment privilege would prevent that from being done. The waiver of that occurred when the Defendant pled guilty....not guilty by insanity....

BY THE COURT: Now, wait just a minute. The burden is upon a defendant to prove insanity at....

BY MR. NESBITT: Yes, sir.

BY THE COURT: The time of the commission of the crime.

BY MR. NESBITT: Yes, sir.

BY THE COURT: The State does not even go into it.

BY MR. NESBITT: That's correct.

BY THE COURT: As you didn't....

BY MR. NESBITT: Yes, sir.

BY THE COURT: The case is with the defense and they are seeking to show that the accused was insane at the time of the commission of the offense.

BY MR. NESBITT: Yes, sir. And what we are saying, the Fifth....

BY THE COURT: He puts on his expert. Now are you entitled to question the expert as to what was told to the expert and elicit from the expert inculpatory statements?

BY MR. NESBITT: Well, sir,  
whether....

BY THE COURT: If you can in  
this case, then would it be true in every case.

BY MR. NESBITT: Well, no, sir.  
The point we are making is the Fifth Amendment remains  
intact until the defendant presents the expert witness  
at the trial....

BY THE COURT: Yes, sir, and  
that's where we are.

BY MR. NESBITT: In the defen-  
dant's behalf.

BY THE COURT: That's where  
we are.

BY MR. NESBITT: The Fifth  
Amendment is intact until that point and then it is  
waived when the defendant elects to make that presenta-  
tion.

BY THE COURT: Well, if he  
doesn't elect to make that presentation, then he cannot....

BY MR. NESBITT: The State would  
be....

BY THE COURT: He cannot rely  
upon insanity as a defense.

BY MR. NESBITT: No, sir, the  
State would be prohibited from cross examining that  
witness or bringing that witness to testify to the Jury  
as to what the Defendant told him.

BY THE COURT: Well, that is what they are contending you shouldn't be permitted to do.

BY MR. NESBITT: Well, what we are contending is, that once they make that move, once they put that witness on the stand and asked him his opinion, we have the right to go into the basis of it, which happens to be, in part, what the Defendant related to the examining physician to determine....

BY THE COURT: Well, I cannot reason any other way but every time you plead not guilty by reason of insanity, you are subjecting yourself to a waiver of your Fifth whenever you put the witness on to show that you were insane, and the Defendant has that burden of proof.

BY MR. NESBITT: I would say that would be generally correct on the assumption that you are interpreting anything the defendant said as inculpatory. But if the defendant offers one exculpatory version to a doctor and later, at trial, offers a completely different or inconsistent version; we are not offering inculpatory statements as an admission to the crime or an admission to facts which would tend to prove guilt.

BY MR. THOMAS: Your Honor, if I can respond to that. If we do....

BY THE COURT: You don't think that this statement is not inculpatory? Would you....I haven't read it, but I just happened to pick out....

BY MR. NESBITT:	We have....
BY THE COURT:	One paragraph
and read it without my glasses and I had to put them on to make sure that is there....	
BY MR. THOMAS:	I would say at
this stage of the proceedings, Your Honor, it would be very inculpatory, and there has been no inconsistent version offered as of this time, either. Now, when we get to rebuttal of the State, I realize that we might be looking at an entirely....	
BY THE COURT:	We may....
BY MR. THOMAS:	Horse of a
different color. Maybe.	
BY THE COURT:	We may.
BY MR. NESBITT:	In this state-
ment, the Defendant....	
BY MR. THOMAS:	Your Honor, I
don't want him to read the statement out loud, either, Your Honor, because there is too much danger of....we can talk about it in chambers or something. I don't want Mr. Nesbitt to read the statement out loud for any reason.	
BY MR. NESBITT:	It is in the
record, Your Honor.	
BY MR. THOMAS:	And we can....
BY MR. NESBITT:	Public....
BY MR. THOMAS:	File it in the
record or something.	
BY THE COURT:	What?



BY MR. NESBITT:	It's a public record....
BY THE COURT:	No, we don't have to read it. I can read it. Well....
BY MR. NESBITT:	Our contention is....
BY THE COURT:	That gives me some concern.
BY MR. NESBITT:	All right, sir. Our contention is simply that the Fifth is intact until the defendant waives it at trial....
BY THE COURT:	That's right.
BY MR. NESBITT:	And it has been waived.
BY THE COURT:	But wouldn't that be true in every case where a defendant pleads insanity?
BY MR. NESBITT:	Not as to the....
BY THE COURT:	In order to prove his insanity, at some state in that proceeding, he has got to waive his Fifth.
BY MR. NESBITT:	Not as to the State calling the examining physician and asking that physician as to....
BY THE COURT:	Now, wait, wait a minute. We are not calling about the State calling anybody....
BY MR. NESBITT:	That's correct.

BY THE COURT: I am talking  
about....

BY MR. NESBITT: That is exactly  
right.

BY THE COURT: When the  
defendant seeks to put on the proof of his insanity at  
the time of the commission of the crime. In every case,  
when he does that, he waives his Fifth?

BY MR. NESBITT: No, sir. That  
is not our position. I think there are some subtle  
differences that exist between....

BY THE COURT: Tell me....

BY MR. NESBITT: Who is called  
by the....

BY THE COURT: What they are.

BY MR. NESBITT: For instance,  
if the defendant were to put on a series of civilian  
witnesses to testify he crawled around on the floor  
barking like a dog for the entire day before he committed  
some crime, I don't think the State would be allowed to  
call a physician that examined him and ask the physician  
what did the defendant tell you happened.

BY THE COURT: Well, I don't  
really....

BY MR. NESBITT: If the State....  
if the defense calls that physician....

BY THE COURT: Now, now, Mr.  
Nesbitt, I really don't think you are being practical

because when they plead not guilty by reason of insanity, we always have some expert on the stand to testify about him.

BY MR. NESBITT: Well, not if all the doctors....

BY THE COURT: That has been my experience. And then, of course, they do put on laywitnesses to corroborate the testimony and the opinion of the expert. I think that is a little too subtle for me to buy.

BY MR. NESBITT: I don't know of any case law to support the Defendant's contention.

BY MR. THOMAS: I think that, Your Honor....a good point that was brought up just now, and the fact that the defendant does have the burden of proof on insanity, and even that is unlike a lot of jurisdictions and there has been a lot of controversy whether he should even have that burden....

BY THE COURT: I appreciate that....

BY MR. THOMAS: So it is sort of like....

BY THE COURT: But I don't think we need to get into that. This....

BY MR. THOMAS: Right. But I mean, it is sort of like, it adds a little more to the, to our argument, I think. I just wanted to mention that as a ground, also.

BY THE COURT:

No, well, no,

I have a fear of that, but not the same one you have and, that is, that one day we are going to get hit with a change of the law by the Louisiana Supreme Court, state that the, the burden of State to disprove the defendant's insanity at the time of the commission of the crime and we will get a bunch of cases reversed and retried, at least one. All right. I think I understand your positions. I will give you a ruling at 1:30. Court is at recess until 1:30.

ARGUMENT CONCLUDED

COURT RECESSED

-----

COURT RECONVENED

AUGUST 15, 1980

JURY RETURNED TO COURTROOM

RULING OF THE COURT

BY THE COURT:                      The Court will  
now rule upon the subsequent objection made by defense  
counsel, and will sustain the same.

Ruling Concluded



1 "to these charges?" And you  
2 said, "No, sir."

3 Did the attorney whisper that in your ear, too?  
4 A Yes. If it's on there, I, I assume he did, Mr.  
5 Nesbitt.

6 Q "Has anyone made any promises to you of a  
7 lesser sentence than what I told  
8 you the maximum penalties were,  
9 that is, fifteen years, of  
10 probation, immunity, or anything  
11 else in order to get you to  
12 plead guilty?" You said, "No,  
13 sir."

14 Did your attorney whisper that in your ear?

15 A I, I went on the advice of my attorneys, Mr. Nesbitt.

16 Q The Judge said:

17 "Are you in good health, mentally and  
18 physically?" You said, "Yes,  
19 sir."

20 "Have you been, or are you now, subjected  
21 to any way, to illness,  
22 accident, or nervous upset."  
23 Your answer was: "No."

24 A Mr. Nesbitt, I was eligible to go up for parole  
25 immediately upon that, and that was exactly what my  
26 feelings were that I was going to get. I went under  
27 the advice of my attorneys, feeling I would make  
28 parole.

29 Q Now, Mr. Felde, you don't recall telling Dr. Marceau  
30 on January 31st, 1979....

31 BY MR. THOMAS:

Your Honor....

1 well, that's all right....

2 BY MR. NESBITT:

3 Q That you found out officers were looking for you  
4 because you were a fugitive and you had been serving  
5 a term for Manslaughter, that you left your job and  
6 went and bought a 357 magnum and some shells, that  
7 you were going to hitchhike out of town because you  
8 felt the police would be watching you on airplanes,  
9 buses, and trains, as well as your car....

10 BY MR. THOMAS: What we would  
11 request, Your Honor, is that he ask....instead of  
12 reading long paragraphs into the record, we would  
13 like him to separate the questions....

14 BY MR. NESBITT: Be glad to....

15 BY MR. THOMAS: And....

16 BY MR. NESBITT:

17 Q Do you recall....

18 BY MR. THOMAS: Instead of  
19 asking a long, narrative question....

20 BY MR. NESBITT:

21 Q Do you recall....

22 BY THE COURT: Well, I don't....

23 BY MR. NESBITT:

24 Q Telling Doctor....

25 BY THE COURT: Just, just a  
26 minute....

27 BY MR. THOMAS: That's my  
28 objection....

29 BY THE COURT: Let me rule on  
30 it....

31 BY MR. NESBITT: Excuse me.

1 BY THE COURT: I can't require  
2 the State to do that. I don't have the control over  
3 the way the State presents its case so the....

4 BY MR. THOMAS: Then, Your  
5 Honor, we would object....

6 BY THE COURT: Objection will  
7 be overruled.\*

8 BY MR. THOMAS: To the questions  
9 asked for reasons previously discussed with the  
10 Court.

11 BY THE COURT: Well, that  
12 objection is overruled.\*

13 BY MR. NESBITT:

14 Q Do you recall telling him that?

15 BY MR. THOMAS: Thank you,  
16 Your Honor. We would take an assignment.

17 BY MR. NESBITT:

18 Q Do you recall telling him that?

19 BY THE COURT: Well, you have  
20 it. It's written. It's a written motion.

21 BY MR. NESBITT: I'm sorry.

22 BY MR. NESBITT:

23 Q Do you recall telling him that?

24 A I recall telling them that I don't remember what I  
25 told them or if it's what I was told. I believe  
26 you'll find that in the report, too, if you'll read  
27 it down farther.

28 Q Well, it says that you....

29 A ....that's what I told them....

30 Q ....weren't sure exactly....

31 A ....that's what I told....

1 Q ....how much you remembered....

2 A ....them, Mr. Nesbitt....

3 Q ....and how much you were told. That's....

4 A ....that's what....

5 Q ....do you recall telling....

6 A ....I told them....

7 Q ....him that? So if you, if he says you told him

8 that, that's what you told him?

9 A I would assume it is, yes. I don't know. I don't

10 remember it.

11 Q And did you see the photographs of your car that was

12 obviously abandoned at the car wash?

13 A The photographs....

14 Q ....of your car....

15 A ....from who? The ones in this case?

16 Q Yes, sir.

17 A No, I don't believe I did.

18 Q Well, you did leave your car at the car wash?

19 A Yes, I did.

20 Q You didn't drive off in your car on the 20th. You'd

21 left it?

22 A I left it there. Yes, I did.

23 Q Dr. Marceau recalls you telling him that you were

24 afraid they'd be watching for you in your car. You

25 told Dr. Marceau that you were going to get a back-

26 pack, which you were sending a friend for....

27 A Well, I had a backpack in my car, Mr. Nesbitt. If

28 you'll go down to wherever you all have it stored,

29 you'll find there is about a hundred-and-ten-dollar

30 backpack in there I just bought.

31 Q Do you recall telling Dr. Marceau....did somebody

on motion of the State, which is permitted to examine him under the conditions under which he was....particularly, under the oppressive conditions he has been held in at the Caddo Parish Jail at that time, there's no doubt that statement was, it had a Fifth Amendment privilege attached when they took it from him; and the Fifth Amendment privilege being Constitutional, it's certainly a heck of a lot stronger than something like a physician-patient privilege which he does not waive by taking the stand; and, well, he may refuse....may waive his right to claim the Fifth Amendment privilege with regard to any questions Mr. Nesbitt asks him about the case, he certainly cannot waive a privilege which pertains to a statement taken in January of 1978; the privilege still attaches to a statement taken at that time; that would be our argument, Your Honor.

BY THE COURT: All right, sir.

Argument Concluded

BY THE COURT: Well, does the State wish to make a reply or not?

BY MR. NESBITT: They called Dr. Marceau to the stand as a defense witness and they asked him....

BY THE COURT: Well, he is arguing the Fifth Amendment....

BY MR. NESBITT: Yes, sir....

BY THE COURT: There is no physician-patient privilege on a Sanity Commission.



1 tell you that? That you had a backpack in your own  
2 car? Did anybody tell you that, Mr. Felde?

3 A I don't know. I don't understand what you're getting  
4 at.

5 Q Do you recall telling the Doctor that you had a back-  
6 pack and you sent a friend for it, and you went into  
7 a bar and started drinking?

8 A I might've told the Doctor....

9 BY MR. THOMAS: Your Honor....  
10 based on that question, I would object, Your Honor,  
11 and due to the line of questioning about, about  
12 what, on statements that he has already, that he  
13 told a psychiatrist that are clearly....told to  
14 that psychiatrist under the circumstances which  
15 they were told in the Caddo Parish Jail, which they,  
16 it is already in evidence, and I also ask that we  
17 would be able to argue it outside the presence of  
18 the Jury. I think that would be appropriate.

19 BY THE COURT: Take the Jury,  
20 please.

21  
22 JURY REMOVED FROM COURTROOM  
23  
24  
25  
26  
27  
28  
29  
30  
31

BY MR. NESBITT:

Yes, sir.

BY THE COURT:

That is a doctor that is appointed by the Court. Any physician appointed by the Court to examine a person does not create a physician-patient privilege.

BY MR. NESBITT:

I would submit if he wanted to assert the Fifth, he shouldn't have gotten on the stand.

RULING OF THE COURT

BY THE COURT:

It is the Court's opinion that he has waived the Fifth. The objection will be overruled.\*

BY MR. THOMAS:

Thank you, Your Honor, we would take an assignment with regard to that....

BY THE COURT:

All right.

BY MR. THOMAS:

On the grounds that, although, he has waived it today, he can't waive the privilege with regard to statements taken back in 1978, January. Thank you, sir.

BY THE COURT:

Just to point out where we are now. The question asked was: Did he remember telling the Doctor such and such; as I recall the statement....

BY MR. THOMAS:

The form....

BY THE COURT:

I mean, the

\* Assignment of Error

question of the State. Bring in the Jury....

BY MR. THOMAS: Your Honor, the form in which....I would have to incorporate in my argument the fact that, as I recall the question, it was asked in the manner, in effect, advising the Jury that he had told Dr. Marceau that on that date: Do you remember giving, do you remember his testimony? Do you remember....

BY THE COURT: I....

BY MR. THOMAS: When you talked to him on that date?

BY THE COURT: I fully appreciate the effect that it has on the Jury. It conveys that intelligence to the Jury; certainly.

BY MR. THOMAS: Well, I think -  
(Interrupted)

BY THE COURT: All right. All right, sir. Bring the Jury in....

BY MR. THOMAS: I would submit, Your Honor, that he can't use Dr. Marceau's name. I would like to say that....did he ever tell anybody that, but referring to that particular report, of course, is extremely prejudicial in the way he asked the question.

BY THE COURT: All right, sir. You've made your objection and you have it in the record.

JURY RETURNED TO COURTROOM

BY THE COURT: All right.  
Proceed, please, sir.

CROSS EXAMINATION OF WAYNE ROBERT FELDE  
(Continued)

BY MR. NESBITT:

Q Mr. Felde, do you remember telling Dr. Marceau that you went to the bar and started drinking and got pretty inebriated?

A ....no, I don't....I repeat for you once more, Mr. Nesbitt. The Sanity Commission was composed of the coroner, the deputy coroner, and another State employee, and when they come up to see me, they had very little interest in what they really came up for and so I was subject to tell them anything.

Q Do you recall telling Dr. Marceau that you vaguely remembered pointing the gun at the police officer and telling him to stop and let you out, and when your instructions were not followed, the officer started wrestling with you for the gun, the car hit a guardrail and the gun went off?

A No, I don't.

Q And you don't recall telling Dr. Marceau that you were close to a garage or a small house and the police told you to drop the gun, when you didn't do that, they shot you because you weren't dropping the gun?

A No, I don't.

Q But you do recall telling him that your father was an alcoholic and committed suicide when you were thirteen?

A No.

1 Q You didn't....you don't recall?

2 A I don't recall talking to the man that much, Mr.  
3 Nesbitt. I honestly don't.

4 Q Do you think Dr. Marceau made that up?

5 A I'm not saying he made it up. I might've been  
6 listening in certain stages of his conversation  
7 when he brought up maybe my father. I don't know,  
8 Mr. Nesbitt....

9 Q ....do you recall....

10 A ....but I'm telling you, I had no faith in the man,  
11 no trust in the man, and I still don't. And what  
12 you got on that paper might be true and might not  
13 be true, I just have no knowledge of it. I don't  
14 remember telling him that.

15 Q Do you recall telling him that you started drinking  
16 heavily and your mother took you to a psychiatric  
17 facility but you did not cooperate and follow-  
18 through, and you joined the service when you were  
19 eighteen, stayed in for three years, you were in  
20 Viet Nam for a year and, although, you had quite  
21 a bit of problems in the service you got an honorable  
22 discharge in 1970?

23 A No, I don't. But I can see what you're getting at,  
24 what's your point, so you can go ahead and read  
25 the report, and then I'll just answer at the end  
26 of it.

27 BY MR. THOMAS: No objection if  
28 he wants to read it, Your Honor.

29 BY MR. NESBITT:

30 Q Do you recall telling Dr. Marceau that you were  
31 extremely intoxicated and you really didn't recall



1                    what happened, couldn't control yourself, something  
2                    like that?

3        A            I recall talking to Dr. Marceau but I don't recall  
4                    what I told him.

5        Q            Well, you talked to him in January of '79, just four  
6                    months after the incident.

7        A            That is close to two years ago, too, isn't it?

8        Q            You did talk to him just four months after the  
9                    incident, though, didn't you?

10       A            Yes, sir, I guess I did.

11       Q            And wouldn't your memory of what you recall from  
12                    that night be better then than now?

13       A            If he was interested in hearing, yes.

14       Q            And when you wrote the letter that has been filed  
15                    in evidence to the attorney in Alexandria, you told  
16                    that person that you were "extremely intoxicated  
17                    at the time." Didn't you start off trying to con-  
18                    vince everybody that you were so drunk you didn't  
19                    know what you were doing and that it was an  
20                    accidental shooting in the back of the car, there  
21                    was no intent, therefore, you can't be guilty of  
22                    murder?

23       A            Well, no, I don't think so, Mr. Nesbitt.

24       Q            You don't think that was it?

25       A            No, I don't.

26       Q            When did you first learn about your blood-alcohol  
27                    content?

28       A            When did I first learn?

29       Q            Yes, sir.

30       A            I still don't understand it.

31       Q            You don't understand that?

1 system, we don't use it.

2 Q So, although, certain insurance companies and groups

3 like that may be going on to it now or requiring

4 people to use it and....

5 A ....I don't think they....

6 Q ....with regard....

7 A ....required it because I think there has been a

8 delay in its official use.

9 Q Is it your testimony, then, at the time you examined

10 Wayne Felde, you didn't know anything about that,

11 this defect. Is that right?

12 A Well, no, sir, I wasn't aware of that term.

13 Q You stated to Mr. Nesbitt that you had gone into the

14 details of the incident on October the 20th, 1978.

15 Did you go into any, you didn't go into any details

16 of what happened inside the police car, did you?

17 A Well, I didn't ask him specific questions as far as:

18 'Did he pull the trigger?' and such as that, but I

19 did go into detail about what occurred at that

20 particular time.

21 Q Do you have any sort of a recollection of whether

22 or not he....was his memory, has a real good memory

23 about what happened?

24 A There were things that he was vague about.

25 Q You haven't had any experience in working with Viet

26 Nam veterans or anybody, really, who's....

27 A ....I'd have to differ with you on that; I have....

28 Q No, wait. Wait. I'm not, let me....

29 A ....oh....

30 Q ....let me....

31 A ....oh, okay.

1	A	It would be better but I don't think the material
2		would be that different because Mr. Felde was
3		very cooperative and attentive and gave basically
4		factual data that was validated at a later date.
5	Q	That was validated?
6	A	Well, in checking other, other material, yes, sir.
7	Q	What other material?
8	A	From....the past history.
9	Q	What past history?
10	A	....the Pre-Sentence and Probation Investigation....
11	Q	....what....
12	A	....when he was in Maryland.
13	Q	Oh, you mean....
14	A	....just....
15	Q	....oh, you mean further back?
16	A	Yeah, just checking, yes, sir.
17	Q	Where did you get that material to check it, to
18		check....
19	A	....from the District Attorney's Office.
20	Q	From who?
21	A	District Attorney's Office.
22	Q	Oh. Do you know if the other two psychiatrists in
23		the case, I mean, do you know if Dr. Braswell and
24		Dr. Marceau were furnished with those documents,
25		too?
26	A	I was not furnished. I went up to the office and
27		reviewed them; and I don't know the actions of the
28		other psychiatrists.
29	Q	You went to the DA's office and reviewed them?
30	A	Yes, sir.
31	Q	Did you contact the District Attorney to get any

1 information from him?

2 A Yes, sir, if I'm going to give....

3 Q ....I mean, the defense attorney?

4 A The defense attorney?

5 Q Right.

6 A No, sir.

7 Q You didn't contact the defense attorney?

8 A No, sir.

9 Q Is there any way for you to determine whether or not

10 a witness is reacting to you in an usual manner, in

11 their normal usual manner?

12 A Now, when you say 'normal usual manner'....

13 Q Do you know if they are acting normally when you

14 talk to them or not?

15 A No, every person has their own idiosyncrasies and

16 their own mode of behavior so comparing his or her

17 behavior at a particular moment, compared to the,

18 at another time, I have no basis for it.

19 Q A person who has been incarcerated or in custody

20 and undergoing treatment for severe wounds, under-

21 going perhaps mental and physical harassment, that

22 would cause stress, wouldn't it?

23 A That is stress, yes, sir.

24 Q Those conditions would have created stresses that,

25 of that nature, stresses of that nature which might

26 ordinarily not have been present and could, in

27 fact, have caused him to answer your questions in

28 a manner in which he might not have answered them

29 if he'd been in a less hostile environment in the

30 Caddo Parish Jail, don't you think?

31 A That's possible, but then that would have more

1 validity if the interaction was negative rather than  
2 positive. He was very attentive and cooperative.

3 Q With regard to the interaction, what if, what if  
4 he had been held, his defense attorneys are not  
5 coming to see him, assume his defense attorneys  
6 do not come to see him, had very little time with  
7 them, he has been subjected or directed to this  
8 type of treatment and, all of a sudden, you come  
9 in there, I mean, don't you think he would be....  
10 you are not a deputy, don't you think he'd be  
11 wanting to please or go out of his way to finally  
12 hope that he had somebody who's interested in his  
13 cause or his case?

14 A Possible.

15 Q I mean, you are an outsider, coming in, supposedly,  
16 unconnected with either side to examine him, isn't  
17 that right?

18 A Yes, sir, but also the degree of his cooperation....  
19 was not in keeping with his feeling that his  
20 defense would be insanity. He was very cooperative.  
21 He did not try to present material in a biased way  
22 in his favor.

23 Q What about somebody who thought that something was  
24 seriously wrong with them or afraid of what might  
25 be wrong with them, and who find it impossible to  
26 discuss horrible experiences they might have had  
27 with the people closest to them much less a  
28 stranger, would that not be consistent with the  
29 way he acted towards you?

30 A I don't truly get the connection.

31 Q Well, how much did you, did you probe into his Viet

1 Nam experience?

2 A No, sir, I didn't go into his, into a specific....  
3 because many people like to forget things, and I  
4 not only didn't do it with Mr. Felde but I don't  
5 do it with any individual whom I talk to. I give  
6 them an opportunity to tell me what they want to.

7 Q Have you experienced the phenomenon where people  
8 who suffer from a memory loss or selective recall,  
9 or whatever you want to call it, spotty memory,  
10 memory impairment, grope and try to remember, try  
11 to remember and want to remember what happened....

12 A ....well, quite....

13 Q ....in a period which is blank in their mind?

14 A Quite often.

15 Q And are they not more likely to be influenced by  
16 external stimuli, so to speak, as if, and those  
17 facts which might be suggested to them as to what  
18 might have happened, or facts that they might read  
19 in the newspaper as to what was supposed to have  
20 happened during that period, wouldn't that be  
21 extremely likely to have some affect upon what  
22 they think they might remember?

23 A Well, it would be difficult for him to separate  
24 what he read and what he was told and what he  
25 actually remembered.

26 Q And so a person, who has had that sort of an  
27 experience, may really not even know if what he  
28 is saying has any connection, whatsoever, with his  
29 independent recollection. Is that correct? It  
30 could be a scenario which is based purely on data  
31 which he, has been suggested to him, told to him



1 as you probably think that I did get from him.

2 Q Oh, I've got, I really have no idea.

3 A Well, it's just what he recalled and so, at that  
4 particular time, it was no attempt at fabrication  
5 in completing the story. In other words....

6 Q ....how....

7 A ....there was....

8 Q ....how can you say, can you say that, positively?  
9 I mean, when you say there's no fabrication or....

10 A ....well, in....

11 Q ....why do you say, why do you use the word  
12 'fabrication'....

13 A ....well....

14 Q ....instead of, I mean, I'm trying to get exactly  
15 the way you were looking at him when you examined  
16 him. You said there was no fabrication. Now, if  
17 he related something to you that he might have read  
18 or been told and it had affected what he thought  
19 he remembered, why would you say he was fabricating  
20 it?

21 A Well, maybe this will help you to understand. What  
22 he related to me, there were gaps and he made no  
23 attempt, at the time he related these facts to me,  
24 to fill in the gaps.

25 Q But that would also be consistent with somebody who  
26 might have been hearing piecemeal accounts, either  
27 from people who were guarding him in the hospital  
28 or from accounts furnished to the newspaper by  
29 the police, isn't that correct?

30 A Well, I don't know whether it is correct or not,  
31 but I can't disagree with you.

1 Q The personal interaction between a person who was  
2 examining someone, psychologist or a psychiatrist,  
3 the personal interaction between his patient and  
4 himself, that will affect the results. Is that  
5 correct?

6 A Yeah, that is what we refer to as rapport....

7 Q ....uh-huh.

8 A ....R-A-P-P-O-R-T.

9 Q And with regard to rapport, at the time you examined  
10 him, how did you observe his physical condition to  
11 be and....he was in good shape?

12 A No, sir, he was in terrible shape.

13 Q What about pain? Did he mention pain to you?

14 A He was in pain. Yes, sir.

15 Q And what steps did you take with regard to him being  
16 in pain?

17 A In what regard?

18 Q What did you try to do for him?

19 A Well, I, I am not involved in the treating process....

20 Q ....I'm not that....

21 A ....I asked....

22 Q ....familiar with it, but I thought that all doctors,  
23 all medical doctors took some sort of an oath where  
24 they, you know, if people were hurting or something,  
25 they try to do something about it.

26 A Well, there're situations were....our hands are tied  
27 and we are not permitted to do this.

28 Q Did you go out and maybe even, you know, walk the....

29 A ....I asked him if he had been receiving his  
30 medicine for pain.

31 Q And he said, yes?

1 pushed down, it was discovered pushed down when the  
2 police were conducting their manhunt?

3 A No, sir.

4 Q With regard to the non-completion of the MMPI.  
5 MMPI's have a lie factor, do they not?

6 A Yes, sir.

7 Q So if....there were MMPI results....would a lie  
8 factor perhaps be affected by stress or anything  
9 like that?

10 A Well, the stressor....attempt to cover up but,  
11 in Mr. Felde's case, the lie scan was quite low,  
12 very low.

13 Q And with regard to the non-completion of the MMPI,  
14 what would that indicate to you? Would that mean  
15 that he is mistrustful or has no recollection or  
16 is confused or what?

17 A Some of that, and another factor is ambivalence....  
18 the....

19 Q ....'ambivalence.' Now, before you go further. Now,  
20 that's a word that has been used with regard to  
21 some psychiatric testimony which was given in 1973,  
22 I believe, which is in evidence....

23 BY MR. THOMAS: Let me....  
24 could I see Dr. Olivos' transcript?

25 BY MR. NESBITT: Could we ask  
26 the Doctor now to be able to complete the answer  
27 and then we came come back to the....

28 BY MR. THOMAS: I am going to  
29 ask the question....

30 BY THE COURT: Had you  
31 completed your answer?

1 A Well, no, sir....

2 BY MR. THOMAS:

3 Q Well, go ahead and complete it....

4 A Well....

5 BY THE COURT: Complete it,  
6 then, please.

7 A Okay, sir. Ambivalence....and the things that you  
8 mentioned, also the fact that it will, he didn't  
9 really....care to complete it because of the possible  
10 results of it might being used against him.

11 BY MR. THOMAS:

12 Q Well, you said he trusted you; didn't he?

13 A I said these are possibilities for an individual  
14 not completing.

15 BY THE COURT: Would you mind  
16 defining the term 'ambivalence'?

17 A Well, it's the....dual feeling of....the best way  
18 to explain it is love-hate....a need-fear. The  
19 young man who loves and respects his father but....  
20 at the same time, would like to punch him in the  
21 face because his father said, no, he couldn't use  
22 the car to go out on a date.

23 BY MR. THOMAS:

24 Q Ready you a sentence here, it says....from Dr. Olivos'  
25 transcript....excerpt of the testimony given on  
26 June 11th, 1973, in Maryland:

27 'During the interview that he had with  
28 me, he appears to be kind of  
29 stunned. He actually was in,  
30 sort of like....his memory was  
31 so spotty that he had this'

wrote a story about what he said.

The defense called Dr. Marceau.

Stipulated he was an expert medical doctor, specializing in the field of psychiatry. A doctor, who, in fact, taught the Defendant's sole psychiatric expert and trained him in this field of specialty. A man who has taught at Baylor Medical School and lectured at many medical schools and psychiatric schools in the country, who has wartime experience to reflect on, director of mental health centers in Shreveport, in Lafayette, a practicing psychiatrist, a teacher in the LSU Medical School system.

He examined the Defendant on January 31st, 1979, approximately four months after the incident, and we submit approximately four months after the incident, because it is before the Defendant learned of the possibility of asserting a delayed stress defense. Dr. Marceau examined the Defendant, discussed the fact that the Defendant had been to Viet Nam, discussed the Defendant's drinking problems, the Defendant indicated extreme intoxication, and, thus, under some circumstances, not responsible for his actions, gave certain details of the offense that are not consistent with an alcohol blackout or consistent with a psychotic break or a break from reality, claimed he did not know for sure what he remembered as opposed to what he was told; but told him some things that only the persons in that car would be aware of, like, 'Pull the car over, I have a gun.' The

If he wanted to commit suicide, he had to have had the intent to do so. If he had the intent to do so, he had to inherently know right from wrong and know what he was doing when he tried to do it. That is inconsistent with having a break from reality, thinking he is in war in Viet Nam. Totally inconsistent.

And either the doctor made it up or someone made it up and it does not fit in any way as an incriminating piece of evidence in this case that he pulled the gun and told the policeman to pull over, back in January of 1979, when Dr. Marceau spoke with the Defendant. It doesn't fit in any way at that time as incriminating evidence. In fact, it would have been more incriminating for somebody to tell him he pulled the gun and started executing the policeman. But, see, the truth is, obviously, the Defendant told Dr. Marceau what he recalled at the time, four months after the incident.

Four hulls at the scene. Four reloads. One live in the chamber. Forty-one bullets in the box. They would have you believe that within minutes the police removed from the car, went to the scene where the Defendant was and figured out that, somehow, twenty-two months in advance, we can reload the gun and cock it and it is going to have some bearing on the case. I submit to you that is completely preposterous.

Does this look like a foxhole or a cave, or does that look like the ride back to the penitentiary?